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RACIAL DISCRIMINATION, XENOPHOBIA
AND RELATED INTOLERANCE

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REPORTS, STUDIES AND OTHER DOCUMENTATION FOR THE PREPARATORY COMMITTEE AND THE WORLD CONFERENCE

Note by the Secretary-General

The Secretary-General has the honour to transmit to the Preparatory Committee the study entitled "Racial discrimination, religious intolerance and education", prepared by Mr. Abdelfattah Amor, Special Rapporteur of the Commission on Human Rights on religious intolerance, in accordance with Commission resolution 1999/78.

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Annex

Racial discrimination, religious intolerance and education

Study prepared by Mr. Abdelfattah Amor,

Special Rapporteur on religious intolerance

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Introduction

1. Wars and all forms of discrimination and intolerance are borne in the minds of men and action should thus be taken as a matter of priority at this level more than at others. This sentence, which is based on the preamble of the Constitution of the United Nations Educational, Scientific and Cultural Organization, eloquently sums up the cause-and-effect relationship between education, racial discrimination and religious intolerance.

2. The role of education is, in fact, much broader. As the key to a nation's development, education is one of the basic indicators used to measure the extent of the success of a country, a region or a particular group. As the Committee on Economic, Social and Cultural Rights stated in its General Comment No. 13 (twenty-first session, 1999) on the right to education (article 13 of the International Covenant on Economic, Social and Cultural Rights), "increasingly, education is recognized as one of the best financial investments States can make" (E/C.12/1999/10, para. 1). The reports of United Nations specialized agencies and programmes give it pride of place among the factors which contribute to a country's human development.

3. Education is a very broad concept and was defined by UNESCO in 1974 as "the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capacities, attitudes, aptitudes and knowledge".[1] This constant and ongoing process of the training of the mind thus does not involve only children and members of national communities. Article 26 of the Universal Declaration of Human Rights proclaims that "everyone has the right to education". Education does not, moreover, take place only in school. It has a more global significance and involves several participants, whose importance varies, of course, according to the age of the person being educated, the type of society and the level of development of the country concerned, etc., but all of which go to make society as a whole responsible for the education of citizens. The family, taken both in the broad and in the narrow senses, schools, the media, religion, politicians, trade unions and the environment in general thus take part in one way or another in the process of education.

4. For the purposes of this study, however, education, as it relates to racial discrimination and religious intolerance, has a more restrictive and at the same time decisive meaning. From the time he starts school, the future adult builds the basic elements of how he views himself and others. The concepts of teaching, instruction and schooling are more restrictive, of course, and, in principle, relate only to the transmission of knowledge and the intellectual training of children and even of adults (basic education), but it is mainly during the transmission of knowledge that society, through the intermediary of teachers and the educational system in general, imparts its beliefs, its dominant values and, in particular, its negative or positive ideas of the racial and religious diversity of the human race to children and adolescents. Schools - and families - are thus not only a context for instruction and the transmission of knowledge, they are also vehicles for "moral and social attitudes calculated to promote the egalitarian and pluralistic ideal".[2]

5. Article 5 of the World Declaration on Education for All (Jomtien, Thailand, 5-9 March 1990) summed up the importance of what is at stake in this regard in the following terms, which are entirely relevant to the purpose of the present study: "The main delivery system for the basic education of children outside the family is primary schooling. Primary

education must be universal, ensure that the basic learning needs of all children are satisfied and take into account the culture, needs and opportunities of the community". In addition to "essential learning tools", article 1 of the Declaration defines basic needs as "the basic learning content (such as knowledge, skills, values and attitudes) required by human beings to be able to survive ...". The importance of primary education is also demonstrated by the position it occupies in the International Covenant on Economic, Social and Cultural Rights (article 14 refers to "the progressive implementation of the principle of compulsory education free of charge for all") and in the mandate of Ms. Katarina Tomaševski, Special Rapporteur of the Commission on Human Rights on the right to education, as defined in resolution 1998/33 of 17 April 1998 (the mandate is reproduced in paragraph 1 of the Special Rapporteur's preliminary report (E/CN.4/1999/49)).[3]

6. All in all, school education, especially primary (or elementary) and secondary education, makes it possible to tackle the root causes that may lead to racial discrimination and religious intolerance or to tolerance and non-discrimination; it will thus be the focus of our attention.

7. Education plays a key role, particularly in societies which are diversified along ethnic and/or religious lines. Far from being an exclusively technical or pedagogical matter or one involving the transmission of knowledge or know-how, it may also heighten or mitigate tensions, may promote confrontation or strengthen the cohesion and integration of groups within society and may build tolerance or be the seat of intolerance of all kinds. As Joseph Yacoub rightly points out, "it all starts in the head. A soldier fighting in a war starts out as a schoolboy fighting in the schoolyard".[4]

8. It is therefore understandable that education must be based primarily on the principle of equality of opportunity and non-discrimination. These are the foundations of the transition from education as a global objective to a "right" inherent in it, i.e. "the right to education", the implementation of which will establish a number of obligations for society in general and schools in particular, the highest ranking of which is respect for the principle of non-discrimination. Education is thus a key characteristic of the subject matter of the present study.

9. "Education is both a human right in itself and an indispensable means of realizing other human rights".[5] It enables economically, socially and culturally marginalized persons and groups to break out of the cycle of poverty and exclusion, play a useful role in society and develop their sense of dignity. It is not only an instrument for learning and communicating in a given language within an ethnic, religious or cultural minority, but is also indispensable for the very survival of the group.[6] The multifaceted nature of the objectives of education are reflected in the nature of the resulting right. The right to education is typically a cross-sectoral right, at one and the same time a civil and political right and an economic, social and cultural right belonging to the first, second and even third generations of human rights (solidarity rights). It is a shining example of the indivisibility of human rights.[7] As far as racial discrimination and religious intolerance are concerned, the realization of this right will therefore be a matter of concern to several categories of persons and, as will be seen, comes within the jurisdiction of several United Nations human rights bodies (treaty and non-treaty bodies).

10. The right to education is provided for in a large number of international instruments. However, the attention it has been given, particularly in terms of its relationship with the problem of racial discrimination and religious intolerance, does not appear to reflect the importance of the stakes described above. The study of legal aspects (chap. I) will enable us to understand the content and scope of these instruments, particularly the universal aspects, the contribution of which will have to be determined, especially as it relates to the practical foundations of racial non-discrimination and religious tolerance. The factual aspects (chap. II) will enable us to work out a typology and then make the necessary recommendations (chap. III) in the light of gaps in the legislation and the realities of discrimination itself.

I. LEGAL ASPECTS OF RACIAL DISCRIMINATION AND RELIGIOUS INTOLERANCE IN EDUCATION

11. The common feature of all international instruments dealing with education, whether as the main subject matter or in association with human rights, is the principle of non-discrimination. The scope of this principle varies according to the educational system in question (sect. A) and the content of education and the objectives which education is designed to achieve (sect. B).

A. Establishment of the educational system

12. There can be no development of the culture of any person or any group and no full enjoyment of other human rights if the person or group does not have access to the right education or is subject to discrimination in education.[8] All international instruments unanimously agree in this regard and proclaim this right with slightly different wording, the most common expression being that "Everyone has the right to education" or variations thereon.[9] The Convention against Discrimination in Education of 14 December 1960 (hereinafter referred to as the "1960 UNESCO Convention") warrants some attention, however, because it deals with this question from the viewpoint of the definition of discrimination, including racial and religious discrimination.[10] Based on a combined reading of its articles 1 and 4, the following introductory comments may be made on the topic of our study.

13. In the definition of discrimination contained in article 1, paragraph 1, the 1960 UNESCO Convention does not appear to attach any importance to the form discrimination may take. It may take a variety of more or less intense and more or less brutal forms: exclusion, limitation, distinction, preference. Article 2, paragraph 2, of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief of 25 November 1981 defines the term "intolerance" in identical terms, but as it relates to religion or belief; although the two concepts do not necessarily mean the same thing, they have the same result.

14. The 1960 UNESCO Convention also does not appear to be concerned about who is responsible for discrimination. There can be different perpetrators: the State, in the context of separate or non-separate public education; the educational authorities, in the private religious or non-religious sector; and the parents or guardians of a child when they violate a girl child's right to education, particularly for religious reasons. In this connection, the child has certain rights, whose compulsory nature varies, of course, but which cannot be denied him by the State, by his parents, by his guardians or by society in general.

15. The 1960 UNESCO Convention also does not deal with the victims of discrimination. In its General Comment No. 13, the Committee on Economic, Social and Cultural Rights takes note of article 3 (e) of the UNESCO Convention and "confirms that the principle of non-discrimination extends to all persons of school age ... including non-nationals, and irrespective of their legal status" (E/C.12/1999/10, para. 34). In this connection, reference may also be made to article 2 of the Convention on the Rights of the Child.

16. The 1960 UNESCO Convention also defines discrimination in terms of its purpose: prohibited discrimination is that which "has the purpose or effect or nullifying or impairing equality of treatment in education" (art. 1, para. 1). Such equality of opportunity and treatment is the basis of any educational system; it does not make it an obligation for States to guarantee education by building schools; it merely guarantees equality of access to already existing educational institutions.[11] For States and for all educational authorities, it involves more or less specific obligations provided for by many international instruments.

1. General obligations

(a) Compulsory education free of charge

17. Equality of opportunity and treatment establishes a positive obligation for States to set up a system of education that is accessible to all. In the relevant international instruments and, in particular, the 1960 UNESCO Convention, the content of this obligation is closely linked to respect for the principle of non-discrimination and to the definition of prohibited discrimination. Thus, while article 1, paragraph 1 (a), defines discrimination, inter alia, as the fact "of depriving any person or group of persons of access to education of any type or at any level", article 4 (a) requires States "to make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all ...". At least as far as primary education is concerned, non-discrimination in education therefore directly involves the establishment of free and compulsory education for the benefit of all, regardless of race and/or religion.[12] There is thus a close correlation between the principle of non-discrimination and the establishment of free and compulsory education, particularly for minorities and ethnic and religious groups.[13] In its General Comment No. 11 (1999) on article 14 of the International Covenant on Economic, Social and Cultural Rights, the Committee reports that, "in developing countries, 130 million children of school age are currently estimated to be without access to primary education, of whom about two thirds are girls" and that "the work of the Committee has shown that the lack of educational opportunities for children often reinforces their subjection to various other human rights violations" (E/C.12/1999/4, paras. 3 and 4). Article 3 of the 1960 UNESCO Convention lists the measures that States must take in order to respect this obligation and ensure that it is respected by the entire public and private educational system, regardless of the nationality of pupils. As at the primary level, the State is bound to guarantee respect for the compulsory nature of education, particularly for the benefit of girl children, regardless of the religious or philosophical beliefs of the parents or legal guardians. General Comment No. 11 also states: "The element of compulsion serves to highlight the fact that neither parents, nor guardians, nor the State are entitled to treat as optional the decision as to whether the child should have access to primary education" (E/C.12/1999/4, para. 6).

18. With the exception of the European Convention of Human Rights, all the relevant international instruments establish the same obligation to guarantee free and compulsory education, but in the context of the general obligation inherent in the right to education.[14] The latter is a matter of concern to the present study only as it relates to the problem of racial discrimination and religious intolerance. It should, however, be noted that, in article 13, paragraph 2, of the Covenant, the wording of this obligation warrants attention because it is directly linked to the objectives and content of education as provided for by article 13, paragraph 1 ("2. The States parties to the present Covenant recognize that, with a view to achieving the full realization of this right:"). As one author has stated, international instruments thus have "a core content" which must guarantee absolute minimum entitlements in respect of access to education, but must also provide for minimum entitlements in respect of the content of education and interculturalism.[15]

19. Several studies on the scope of the principle of non-discrimination in the education of minorities and indigenous children have rightly shown that the principle of non-discrimination must be handled with a great deal of care. Differences of result in the educational system are not always attributable to the discrimination to which minority groups might be subject, but to various handicaps which affect both the majority and minorities (family, economic and social situations, etc.).[16] As one study rightly concludes, the result is that: "In cases where the majority has no access to quality education, it seems legitimate to give priority to equality and non-discrimination rather than to the respect and promotion of diversity" (E/CN.4/Sub.2/AC.5/2000/WP.4, para. 24).

(b) The question of separate systems of education

20. Public schools and compulsory schooling imply that young people of different origins attend the same schools. As a Swiss expert rightly indicates, "If children developed separately at school, they would continue to do so later on in society and this would intensify social, cultural and economic inequalities. Ghettos would spring up and violence would threaten social peace".[17]

21. In strictly legal terms, the lawfulness of separate schools is still open to discussion (these are schools or classes set up in public education; they must therefore be distinguished from private schools). They may be said to create a situation of segregation and to be in breach of the principles of equality of treatment and equality of opportunity proclaimed by many international instruments. As the Committee on the Elimination of Racial Discrimination rightly pointed out in its 1983 annual report, establishing two systems of education may be understandable, but "might in time lead to the practice of discrimination among different strata of the population" (A/38/18, para. 197). Equality does not necessarily mean that treatment must be identical in all circumstances. According to established international case law and universally accepted doctrine, differentiation is not discrimination if the purpose is to achieve a legitimate goal and if there is a proportional relationship between the means used and the goal to be achieved. Only differentiation which is not justified de facto is inadmissible, provided that the criteria used are not reasonable and objective. In some countries, ethnic groups themselves assert their right to be treated as a separate and independent sector of the nation State's education system and claim that they are entitled to a distinct indigenous education.[18]

22. In the above-mentioned General Comment No. 13, the Committee on Economic, Social and Cultural Rights considers, not without some hesitation, that "in some circumstances, separate educational systems or institutions for groups ... shall be deemed not to constitute a breach of the Covenant"; it merely endorses article 2 of the 1960 UNESCO Convention (E/C.12/199+9/10, para. 33), which is the one that provides the most detailed information on the question.

23. The UNESCO Convention deals with the question of "separate educational systems or institutions" in the provision on situations deemed not to constitute discrimination within the meaning of article 1. According to the Convention, such an educational system must basically be exceptional in nature and integration thus depends on the establishment of a single public educational system in which pupils belonging to various minorities and ethnic and religious groups learn to frequent one another and live together peacefully from a very young age.

24. The Convention lays down very strict conditions for the establishment or maintenance of separate educational institutions, whether "for pupils of the two sexes" (art. 2 (a)) or "for religious or linguistic reasons" (art. 2 (b)), it being understood that, in some countries, the two may overlap.[19] In the first case, four conditions, which are at least equivalent to those in force in the system of non-separate institutions, are laid down. They relate to access, the qualifications of teaching staff, the quality of school premises and equipment and courses of study in these institutions. It is obvious, however, that providing service of equivalent quality cannot be guaranteed if there are sharp disparities in State spending policies.[20] Like schools for minorities (art. 5, para. 1 (c) (iii)), separate institutions established for religious or linguistic reasons must fulfil the condition of optional attendance or participation and conformity with such standards as may be laid down or approved by the State, in particular for education of the same level.[21]

2. Specific obligations: the education of minority, indigenous and migrant children

25. The "sense of dignity - cultural identity - diversity" triptych to be found in several international instruments is one of the basic objectives of education, whose purpose is not only to transmit knowledge.[22] A person's sense of dignity depends on the acquisition of "cultural identity", defined as "a set of cultural values by which persons or groups define themselves, express themselves and wish to be recognized; cultural identity implies freedoms inherent in personal dignity and combines cultural diversity, the specific and the universal, and memory and project in a constantly evolving process".[23] The education and cultural identity of a group are thus closely related and any prejudice leading to discrimination or intolerance is a violation of a person's integrity. The right to education is thus particularly significant for ethnic, linguistic and/or religious minorities as a means of safeguarding their cultural identity and protecting themselves from various kinds of discrimination. International instruments recognize that these minorities have specific rights, whose exercise is nevertheless subject to certain conditions, the basic reason for which is that the social cohesion and unity of the State should not be disrupted.

(a) Recognition of specific rights

(i) The right to carry out educational activities

26. In many States, specific provisions, including constitutional provisions, guarantee minorities the right to establish and maintain their own schools, standards for the operation of which should be the same as for other schools.[24]

27. The 1960 UNESCO Convention contains a provision especially intended for minorities: "It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools" (art. 5, para. 1 (c)).

28. Article 26 to 31 of ILO Convention No. 169 of 27 June 1989 concerning Indigenous and Tribal Peoples in Independent Countries also recognize the right of these peoples to establish their own educational institutions and facilities.

29. Similarly, article 13, paragraph 1, of the Council of Europe Framework Convention for the Protection of National Minorities recognizes that persons belonging to a national minority "have the right to set up and to manage their own private educational and training establishments" within the framework of the education system of the State, but, in paragraph 2, it appears to indicate that the exercise of this right may depend on the minority's financial ability: "The exercise of this right shall not entail any financial obligation for the Parties".

30. Although there is a special provision of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 18 December 1992 relating to the content of education (art. 4, para. 4), there is no specific provision on the right to carry out educational activities on behalf of protected minorities. This gap does not appear to be decisive because, quite apart from any legal status this provision may have, States are bound, under article 8, paragraph 1, to respect the rights of minorities provided for in "international treaties and agreements to which they are parties" and article 8, paragraph 2, states that "the exercise of the rights set forth in the Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms".

(ii) Use and teaching of minority and migrant languages

31. The question of language is intimately bound up with a group's cultural identity and therefore with its sense of dignity. The mother tongue is what enables children to "take off" intellectually once they start school and is vital to "the continuity of children's psychomotor, and affective and cognitive development".[25] Failure to respect this linguistic identity creates a feeling of exclusion from the majority group, and of discrimination, and runs directly counter to one of the basic tenets of education recognized in every international instrument: the development of the human personality.[26] On the other hand, the use of an official language, even one that is formally a foreign language, may contribute to social cohesion and help to unify the State, particularly in developing countries with great linguistic diversity, although the use of a single minority language as an official language can give rise to a situation of discrimination as between the minority languages. In such cases, paradoxical as it might seem, a foreign language

that is used officially or has constitutional status becomes a force for integration and national unity and guarantees non-discrimination among the minority languages, thereby showing the limits of linguistic diversity.

32. Whatever the situation, there are two problems to be addressed: the right of the child belonging to a minority to teaching *of* his own language and to teaching *in* his own language. The positions adopted in international instruments vary greatly in this regard, reflecting the progressive recognition of the phenomenon of minorities.

No explicit recognition

33. Several instruments contain no explicit provision obliging States to arrange for teaching of or in minority languages. Examples of this are the 1948 Universal Declaration of Human Rights and the two International Covenants of 1966, but particularly the International Covenant on Economic, Social and Cultural Rights, which, perhaps surprisingly considering that it deals with education as a whole (arts. 13 and 14), makes no special reference to the issue of the language to be used in teaching children belonging to minorities. Two hypotheses could be advanced in this regard.

34. The first hypothesis is extensive and refers more to the spirit than to the letter of such instruments. It may be argued, either on the basis of the general principle of non-discrimination and the aims of education, or, more directly, on the basis of the rights recognized for minorities (article 27 of the International Covenant on Civil and Political Rights), that recognition of language rights as a vector for the development of the human personality and of the sense of dignity of the children concerned, places an implicit obligation on States. Non-discrimination on racial or ethnic grounds would then be viewed as a positive obligation to guarantee the children of such minorities teaching of and in their mother tongues through the State educational system. The Committee on Economic, Social and Cultural Rights does not shed any particular light on this issue in its General Comment No. 13 on article 13 of the Covenant.

35. However, on the basis of the rules of interpretation[27] and as a matter of general principle, that hypothesis is difficult to accept. Even the most pertinent provisions (article 27 of the International Covenant on Civil and Political Rights) does not impose a positive obligation on States and indeed does not refer to the right to education. This is the interpretation which the European Court of Human Rights seems to give, in the Belgian "languages in education" case, to article 2 of the First Protocol to the European Convention on Human Rights ("No person shall be denied the right to education"). In its judgement on the merits, of 23 July 1968, the Court concludes that article 2 "merely [guarantees] to persons subject to the jurisdiction of the Contracting Parties the right ... to avail themselves of the means of instruction existing at a given time". The Court confirmed the State's right to determine the official languages to be used in public education and stated: "The Convention lays down no specific obligations ... In particular ... [it] does not specify the language in which education must be conducted ... ."[28]

Explicit recognition

36. The 1960 UNESCO Convention, though adopted well before the two International Covenants, explicitly recognizes the right of members of national minorities to "the use or the teaching of their own language" (art. 5, para. 1 (c)). However, that recognition, while explicit, does not apply to State schools but to schools established by minorities who wish "to carry on their own educational activities" (art. 5, para. 1 (c)). There do not appear, therefore, to be any additional obligations on the educational system established by the State.

37. The instruments dealing particularly with minorities appear to give more protection to minorities' identity in educational terms, although they are drafted in such a way as to give States discretion to decide for themselves whether it is appropriate to make provision for such education.[29]

(a) This applies to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which states as follows in article 4, paragraph 3: "States *should* take appropriate measures so that, *wherever possible*, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue" (author's emphasis);

(b) The document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe (5-29 June 1990) proclaims, in paragraph 34, the rights of persons belonging to minorities to receive instruction of their mother tongue or in their mother tongue;

(c) Article 14, paragraphs 1 and 2, of the Council of Europe Framework Convention for the Protection of National Minorities guarantees the same rights, but on condition that there are sufficient people belonging to minorities and having regard to the resources available to the State;

(d) The 1993 draft United Nations declaration on the rights of indigenous peoples recognizes indigenous peoples' "right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures ..." (art. 14) and indigenous children's "rights to be provided access to education in their own culture and language", even if they live outside their communities (art. 15).[30]

38. The treaty bodies have an important role to play in interpreting convention provisions regarding the issue of non-discrimination in education. The Committee on the Elimination of Racial Discrimination, for example, rightly considers that the use of a minority language, including as a compulsory teaching language, is a step towards implementation of the principle of non-discrimination within the meaning of articles 1, paragraph 4, and 2, paragraph 2, of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination.[31] In many of its reports, the Committee also recommends that States parties should take all appropriate measures to ensure the promotion of minority languages and to enable children, including the children of migrant workers, to pursue their studies in their mother tongue.[32]

(b) Conditions for the exercise of these rights

39. In the area of education, the promotion of minority languages and, more specifically, the right to carry on educational activities should not result in the isolation or exclusion of certain ethnic and racial groups. The 1960 UNESCO Convention places three conditions on the exercise of this right (see article 5, paragraph 1 (c)):

(a) It must not be "exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty". There are, in fact, two distinct conditions here: the first relates to the linguistic and cultural integration of schoolchildren belonging to minorities, since knowledge of the official language tends to promote integration and social cohesion;[33] the second protects the State's territorial integrity and sovereignty and prohibits, in particular, the provision of education that might promote separatist tendencies;[34]

(b) As with separate educational establishments and private schools (see article 2 (b) and (c)), the level of education in minority schools must not be inferior to the general standard laid down or approved by the competent authorities;

(c) Lastly, as with separate institutions established for religious or linguistic reasons (see article 2 (b)), attendance at such schools must be optional.

3. The right to freedom of education

40. The principle of non-discrimination that obliges the State to provide free and compulsory education (the right to education as a social right) entails another aspect of the right to education, which puts it more on a par with the classic individual freedoms: the right to freedom of education.[35] A quality education should not only aim to enable all persons to participate effectively in a free society (article 13, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights) but should also be based on personal freedom, i.e. on "a multiplicity of educational supply".[36] This aspect is stressed by the human rights instruments. All education policy should take account of "the best interests of the child"[37] and the responsibility for educating children falls first and foremost on parents.[38] As far as the current discussion is concerned, this personal dimension has several aspects and raises a number of problems. Let us consider two of these.

(a) Non-discrimination and the choice of institutions other than those established by the public authorities

41. All the relevant instruments contain more or less detailed provisions regarding freedom of education; it is clear from these that education is not a State monopoly, but the State has to ensure respect for the principle of non-discrimination, including non-discrimination on racial grounds.

(i) Education is not a State monopoly

42. The relevant provisions are similar in that they establish the principle of multiplicity of educational supply and, consequently, freedom of choice.[39] The classic provision in this regard is contained in article 13, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights.[40] However, unlike in the case of minorities and religious groups, these provisions seem to be general in their scope *ratione persona*, which does not have any particular application to racial or ethnic groups; private education is a response to very varied needs.[41] However, bearing in mind the flexible definition of the concept of minority and the overlap between race and religion, there is nothing to stop a racial group from claiming the freedom either to establish an educational system or to choose a given institution, always provided that they observe the internationally established rules contained in these instruments.[42]

43. This freedom is very important, particularly in extreme situations, since education may be the ideal vector for all forms of intolerance and totalitarianism if it is based on a particular ideology or it is a State monopoly, or if it is based on an official view that is imposed on the children in the State system.

44. Lastly, according to well-established case law, the State does not act in a discriminatory fashion if the subsidies it provides to private schools are lower than those granted to the public education system, or even if it does not subsidize the private system at all.[43] Consequently, for the purposes of this study, ethnic and religious minorities, for example, cannot claim a right from the State in this respect. However, as the Committee on Economic, Social and Cultural Rights states in its General Comment No. 13, "if a State elects to make a financial contribution to private educational institutions, it must do so without discrimination" (E/C.12/1999/10, para. 54). The Human Rights Committee takes the same view, on the basis of article 26 of the International Covenant on Civil and Political Rights.[44]

(ii) Respect for the principle of non-discrimination

45. The establishment and maintenance of private schools, and the privatization of education in general, may result in the ghettoization of certain ethnic groups and perpetuate a lack of understanding and fear of others, and may be a potential source of conflict between communities. A balance needs to be struck between, on the one hand, the establishment of a public education system and the fundamental principle of free education as a basic guarantee of equality, and, on the other hand, individuals' freedom to choose the kind of education that is appropriate to their beliefs or their membership of an ethnic group. Such a balance can be achieved only by respecting the principle of non-discrimination, which, if it is guaranteed by the State, makes it possible to ensure equality of opportunity for all individuals and groups, whatever their ethnic or religious affiliation (see General Comment No. 13, E/C.12/1999/10, para. 30). There are three aspects to this principle.

46. The first aspect is of a general nature. Freedom of education is guaranteed on condition that the aims of education established in these instruments are observed.[45] The aim is to "promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups ..." (International Covenant on Economic, Social and Cultural Rights, article 13,

paragraph 1). Clearly, then, it is not only the State that has obligations regarding the content of education, but all who occupy positions of responsibility within a country's educational system.[46]

47. The second aspect relates to the standard of education provided in these establishments, which should "conform to such minimum educational standards as may be laid down or approved by the State".[47] The yardstick here is the standard of education provided in public institutions as regards, for example, admission, curricula and the recognition of certificates (see General Comment No. 13, E/C.12/1999/10, para. 30). Failure to comply with this principle may constitute prohibited discrimination.[48]

48. The third aspect emerges by converse implication from article 2 (c) of the 1960 UNESCO Convention, concerning non-discriminatory situations. The aim of establishing or maintaining this type of education must not be "to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities".[49] Private schools therefore complement public education in cases where the public system does not provide teaching of or in the language and of the religion of an ethnic or religious minority.

(b) Freedom of education, religious education and religious intolerance

49. In many instruments, religious education is seen as a projection of freedom of conscience, which is itself the basis of freedom of education.[50] That explains why the reference to religious education is encapsulated within provisions on educational freedom. The most comprehensive provision in that regard is article 5, paragraph 1 (b), of the 1960 UNESCO Convention, which reads:

> "It is essential to respect the liberty of parents ..., secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their convictions".[51]

Accordingly, the principle of non-discrimination implies in this case two distinct kinds of obligation falling upon the State.

50. The first, purely passive obligation (that of non-interference), deriving from the implementation of educational pluralism, is that of respect for the liberty of parents practising minority religions to choose for their children private institutions offering an education in conformity with their convictions, provided that the instruction given meets minimum quality standards.

51. The second obligation seems to concern public establishments[52] and lays upon the State two requirements of widely varying stringency. Firstly, the State is required to take the necessary measures, through appropriate modalities of implementation, to provide within its own educational system for the religious education of children in accordance with their parents' convictions and therefore those of minority religious groups.[53] The wording of article 5, paragraph 1 (b), of the 1960 UNESCO Convention does not state what modalities are meant:

they may relate to the teachers recruited to provide this type of instruction, or the teaching manuals and tools, or again the class time reserved for such instruction. Secondly, the liberty enjoyed by the parents entails for the State the obligation to protect the denominational pluralism of individuals and groups against any domination by one specific religion such as would compel them "to receive religious instruction inconsistent with ... their convictions".[54]

52. In its General Comment No. 13 the Committee on Economic, Social and Cultural Rights presents some very useful further considerations already formulated in 1993 by the Human Rights Committee in its General Comment No. 22 on article 18 of the International Covenant on Civil and Political Rights (right to freedom of thought, conscience and religion).

53. First, as to the scope of the obligation "to ensure the religious and moral education of ... children in conformity with their [parents'] convictions" contained in article 13, paragraph 3, of the Covenant, the Committee makes it clear that this obligation applies to public establishments and permits, for instance, "instruction in subjects such as the general history of religion and ethics if it is given in an unbiased and objective way, respectful of the freedoms of opinion, conscience and expression".[55] The qualitative criteria for absence of bias and for objectivity are not indicated, but it is respect for plurality of convictions in classes and schools, as also the dictates of scientific neutrality inherent in any educative function, which constitute the essential guarantees of such instruction. Thus, if the instruction conveys a historically negative image of a religion, or transmits a biased and scientifically unfounded interpretation of historical facts, or resorts to "invidious distinctions"[56] or "value judgements"[57] with regard to a people or a minority on the grounds of its beliefs or traditional religious practices, that instruction is neither impartial nor objective. It will not always be easy, of course, to say where non-objective reporting of a historical fact begins. Some facts may be the subject of controversy among those who have written the history of a people or a religion. The educational context and, the teacher's personality, origin, training and culture are as important in this respect as the content of the message addressed to the pupils. Whatever the ethnic or religious mix at the school, the teacher must maintain strict neutrality and refrain from putting forward any philosophical or religious opinion that might be detrimental to the freedom of conscience of the children and the educational role of the parents.[58]

54. At the quantitative level, General Comment No. 13 is more useful. The Committee "notes that public education that includes instruction in a particular religion or belief is inconsistent with article 13 (3) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians" (E/C.12/1999/10, para. 28).[59] This protection is not always easy to put into effect, for it may be in competition with other principles laid down in international law or constituting the very foundations of education in some States. Two examples relating to a particular notion of religion and religious freedom may serve to illustrate this difficulty.

55. The first, reported by Katarina Tomaševski, Special Rapporteur on the right to education, concerns the attitude of certain parents adhering to minority religions who consider the prohibition by the host State of corporal punishment of schoolchildren as an infringement of their right to provide for their children's education according to their religious convictions and as amounting to a threat of indoctrination of children against their parents' convictions (E/CN.4/1999/49, para. 68). In their decisions on the case the European Commission of Human

Rights and particularly the Committee on the Rights of the Child rejected this interpretation as incompatible (according to that Committee) with the Convention on the Rights of the Child.[60] In general, as rightly noted by the Committee on Economic, Social and Cultural Rights in its General Comment No. 13, "corporal punishment is inconsistent with the fundamental guiding principle of international human rights law enshrined in the Preambles to the Universal Declaration of Human Rights and both Covenants: the dignity of the individual" (E/C.12/1999/10, para. 41).

56. The second example can be put in the form of a question - which indeed has been raised in France in highly polemical terms and with much media coverage - concerning the principle of the secular nature of the Republic in general and the school system in particular, on the one hand, and freedom of conscience on the other. Are or are not the wearing by pupils of signs of membership of a religious community and, by extension, the practice of certain rites, compatible with the very rationale and functioning of the public school system and do they warrant restrictive measures or even expulsion of the pupils concerned? Asked for a formal opinion, the French Council of State has given a very hedged answer, appealing extensively to international provisions, but highlighting the complexity of the question and the imperative need for prudence in this area.

57. In its opinion dated 27 November 1989, the Council of State first defined what was meant by "secular" and then, on the basis of that definition, to which we shall return, clearly stated the principle that "the wearing of religious signs is not in itself incompatible with the secular principle".[61] The applicability of this principle is not absolute; the Council of State makes it subject to conditions some of which evoke the international instruments on the subject. The wearing of religious signs:

(a) must respect the liberty of others and therefore excludes the wearing of signs whose ostentatious or assertive nature would amount to an act of pressure or provocation, proselytism, or propaganda;

(b) must not be detrimental to the dignity or freedom of the pupil or of other members of the school community, nor jeopardize their health or safety;

(c) does not exempt pupils from their scholastic duties and must not interfere with teaching activities;

(d) must not disturb public order or the normal functioning of the public education system.

58. The conditions laid down are, as we can see, numerous; they are based on principles so universal as to preclude any local specificity: respect for public order, for scholastic duties, for the freedom of others, and for dignity. It is, on the other hand, the premises of the Council of State's argument which are liable to stir a debate in regard to the subject of this study. The question is simple: must public education, in particular at the primary and secondary levels, be secular, and do the requirements of secularity, the conditions of which must be defined, have

implications for the public school as a place where differences are respected? Can a religious type of education be provided and encouraged by the State in public establishments which are by definition open to all children?

59. It would seem that if secularity is defined as "the legal expression of a political notion that implies separation between civil society and religious society"[62] and if in the educational field it is taken to mean the absence of any connection with religion, in regard either to the curriculum or to the conduct of the teachers, it becomes decidedly inopportune to transpose it to contexts other than those in which it developed. In many countries religious education (often meaning instruction in the dominant religion) constitutes one of the essential features of the public school system and it seems quite absurd to argue in terms of the secularity of society in general and schools in particular. However, that is not the only way to look at secularity. According to one author, it means "above all respect for freedom of conscience, including religious freedom" and "there is no opposition between religious freedom and secularity".[63] Transcending national divergencies, it is this second aspect which we find in the constitutions of many States, including those where a religion is proclaimed as religion of State or of the State, as also in most of the relevant international instruments. And that is what matters, far more than theoretical or conceptual debates on the ideological underpinnings of education.

B. The content of education

1. The scope and nature of the obligations concerning the content of education laid down in international instruments

60. Equal access and effective enjoyment of the right to education, whatever may be the type of tuition or instruction (public, private, schools for minorities, denominational schools, etc.), are meaningless if education is a vector of discrimination, i.e. if the actual content of the education is conducive to racial discrimination or incites religious intolerance. Several international instruments deal specifically with the objectives to which education should be directed. At this point, it should be noted that most of the instruments studied confine themselves to formulating or reiterating general principles rather than establishing a precise content for education.[64]

(a) Universal Declaration of Human Rights, 10 December 1948

61. Here again, it was this universal instrument which served as a model for all the international texts dealing with non-discrimination in the sphere of education. Article 26, paragraph 2 reads:

> "Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups ...".[65]

Other instruments have either reproduced as it stood the formulation in the Universal Declaration,[66] or have expanded it and enhanced its content. Among these latter may be cited the Convention on the Elimination of All Forms of Racial Discrimination, dated 21 December 1965, article 7 of which stipulates:

"States parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education ..., with a view to combating *prejudices* which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups ..." (author's emphasis).[67]

(b) International Covenant on Economic, Social And Cultural Rights, 16 December 1966

62. While reproducing the same wording, article 13, paragraph 1, of the Covenant adds new elements to the obligations relating to the content of education: education must also aim at "the full development of the human personality and the sense of its dignity", and its objective must also be to "enable all persons to participate effectively in a free society"; as well as to racial and ethnic groups, this provision extends to religious groups.

63. In paragraphs 4 and 5 of its General Comment No. 13, already mentioned, the Committee adds little of importance regarding the content of an education consonant with the objectives set out in article 13, paragraph 1, of the Covenant and confines itself to stating that the article is innovative in relation to article 26 of the Universal Declaration of 1948. The Committee goes on to say that a "contemporary interpretation" of article 13 of the Covenant must be established in the light of "other international instruments" which "have further elaborated the objectives to which education should be directed" and which have received "widespread endorsement ... from all regions of the world". The Committee specifically cites the World Declaration on Education for All, adopted at Jomtien, Thailand, in 1990 (art. 1), the Convention on the Rights of the Child (art. 29, para. 1), the Vienna Declaration and Programme of Action of the World Conference on Human Rights (Part I, para. 33, and Part II, para. 80)[68] and the Plan of Action for the United Nations Decade for Human Rights Education (para. 2).

64. The method is, to say the least, curious and seems thoroughly questionable. The rationale of a General Comment is to draw on acquired experience in order to shed useful light, which an ordinary reading is insufficient to provide, on a major provision or on problems of interpretation and application. There can be no doubt that the content and objectives of education constitute an essential aspect of article 13 of the Covenant and are an irreplaceable instrument for combating discrimination and intolerance. The right to education (equal access, free and compulsory schooling, etc.) loses all point if that education is in one way or another conducive to racial discrimination and religious intolerance. In this regard it would not appear that a mere reminder of the principles of the Covenant and reference to the international instruments, however relevant, are sufficient. As must nevertheless be recognized, it was only relatively recently that the question of the right to education became a subject of particular attention on the part of the Committee on Economic, Social and Cultural Rights or other competent United Nations bodies.[69] The weakness of the standards must no doubt be explained, as in any branch of law, by their relative newness and the recency of the attention paid to them.

(c) Convention on the Rights of the Child, 20 November 1989

65. This treaty, relatively more precise, establishes the interdependence between education and culture. Article 29, paragraph 1 (c), specifies that education must aim at the "development of respect for the child's parents, his or her own *cultural identity*, *language* and *values*, for the *national values* of the country in which the child is living, the country from which he or she may originate, and for *civilizations different* from his or her own". The human groups covered by article 29, paragraph 1 (d), are apparently wider than those referred to in previous instruments, for it makes the purpose of education "the preparation of the child for responsible life in a free society, in a spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, *national* and religious groups and persons of indigenous origin" (author's emphasis).[70] While reproducing the negative wording of article 7 of the International Covenant on Civil and Political Rights, article 30 of the 1989 Convention on the Rights of the Child applies it to children of indigenous origin or belonging to minorities, who may not be denied the right to have their own cultural life, to practise their religion or to use their own language. This article does not specially target education, but the nature of the rights proclaimed in it and a parallel reading with paragraph 1 (c) of the above cited article 29 assigns school education a decisive role in the protection and promotion of those children's own identity and in respect for the values of the majority.

(d) Convention on the Elimination of All Forms of Discrimination against Women

66. Article 10 of this instrument enumerates the measures that States parties must take in the field of education; paragraph (c) reads as follows: "The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging co-education ... and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods".

(e) Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 18 December 1992

67. The Declaration on the Rights of Minorities gives the content of education an *intercultural* dimension, but without expressly using the term, so as to include "knowledge of the history, traditions, language and culture of ... minorities" and of "society as a whole" (art. 4, para. 4).

(f) Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 25 November 1981

68. Without specifically mentioning school education, this Declaration stipulates that the child "shall be brought up in a spirit of understanding, tolerance ... [and] respect for freedom of religion or belief of others ...", and seems to indicate that this is the responsibility of society as a whole (art. 5, para. 3).

(g) Regional instruments

69. In this connection, four texts concerning three regions, namely the Americas, Europe and Africa, should be mentioned:

(i) The additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 17 November 1988 (the so-called "Protocol of San Salvador"), article 13, paragraph 2, of which borrows heavily from similar provisions in the International Covenant on Economic, Social and Cultural Rights;

(ii) The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe (CSCE) (5-29 June 1990);

(iii) The Framework Convention for the Protection of National Minorities of 1 February 1995, which is noteworthy for several reasons. Probably by virtue of its stated purpose, it is one of the few international instruments to employ the concepts of "intercultural dialogue" and "spirit of tolerance", especially in education (art. 6, para. 1). In this field the Framework Convention invests this concept with a relatively precise meaning that embraces "knowledge of the culture, history, language and religion" of national minorities and of the majority (art. 12, para. 1), as well as "opportunities for teacher training and access to textbooks" and contacts among students and teachers of different communities (art. 12, para. 2);

(iv) The African Charter on Human and Peoples' Rights, article 17 of which recognizes the right to education (para. 1). However, the wording of paragraph 3 is somewhat strange, even dangerous: "The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State". One commentator has rightly observed that "there is quite a fine dividing line between the promotion and protection of certain values and censure in the name of these same values ... and it is a matter of concern that educational freedom (religion, language) is not assured and ... in fact is nothing more than the potential to adhere to an official cultural model.[71]

(h) Assessment of the situation

70. Two observations requiring further elaboration emerge from the analysis of these instruments: a certain quantitative increase in the objectives pursued since 1948 and a continuity in the obligation of non-discrimination.

Quantitative increase

71. By improving on the content of the Universal Declaration, which was adopted in the late 1940s, it must be recalled, the subsequent instruments attest both to the remarkable progress made since 1948 and also, paradoxically, to the persistence of discrimination and intolerance in

more complex and certainly more subtle forms. As one study points out: "The ways in which racism manifests itself and is perpetrated vary across cultures, contexts and historical eras - as must the strategies to combat racism".[72] What needs to be done in this area, therefore, will be all the more difficult in that racism has a considerable capacity for adaptation and this scourge cannot reasonably be expected to disappear in the near future.

Continuity in the obligation of non-discrimination

72. All the instruments studied reveal a continuity and great consistency in the imperative nature of the obligation relating to the non-discriminatory content of education. This obligation has a dual foundation:

(a) Firstly, the general obligation of non-discrimination set out in numerous instruments adopted since the Universal Declaration of 1948. Restrictions on this obligation, including affirmative action, are subject to strict conditions and do not in any way undermine the obligatory nature of the principle.[73] Reservations to some of these instruments relating specifically to the struggle against discrimination are either heavily circumscribed[74] or prohibited altogether.[75]

(b) Secondly, as has been pointed out in recent studies, there is no doubt as to the nature of the obligations relating to the content and objectives of education.[76] Three important examples deserve to be mentioned:

(i) "States Parties undertake to adopt immediate and effective measures ..." (article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination);

(ii) "The States Parties ... agree that education shall be directed ..." (article 13, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights and article 29, paragraph 1, of the Convention on the Rights of the Child);

(iii) "States Parties shall take all appropriate measures ..." (article 10 of the Convention on the Elimination of All Forms of Discrimination against Women);

73. We may add to these examples[77] article 5, paragraph 1 (a), of the 1960 UNESCO Convention, which adopts the same imperative wording as does article 26, paragraph 2, of the Universal Declaration: "Education shall be directed to ..., it shall promote ...". Such wording is also used in respect of religious education - this is the case with article 5, paragraph 1 (b), of the same instrument: "... no person or group of persons should be compelled to receive religious instruction inconsistent with his or their conviction". This is likewise true of certain instruments which, although they do not have a fundamentally binding quality, refer to principles already set out in existing international conventions; article 5, paragraphs 2 and 3, of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief states that: the child "shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians ..." and that the child "shall be brought up in a spirit of understanding, tolerance ...".[78]

74. Thus, in contrast to certain aspects of the realization of the right to education, namely the establishment of an educational system, the very wording of the undertakings made imposes on States an obligation of result under which, in terms of content, education must be provided in conformity with the relevant principles established by international instruments.[79] In this and all other areas, non-discrimination is not to be realized "progressively", but must be guaranteed immediately and fully and is equally relevant to all States, irrespective of their level of development.[80]

75. This obligation applies to the entire educational system of a given country, even when the educational institutions are not State-run. It is the educational function in and of itself that is subject to the principles of non-discrimination and tolerance, irrespective of the status of those responsible for running the educational institutions. Several instruments, when dealing with the establishment of private educational institutions, go so far as to stipulate that they must respect the principles of non-discrimination on the basis of race and of tolerance, inter alia.

76. Irrespective of the status of the educational authorities (public, private or religious institutions, schools for minorities, etc.), however, it must be noted that it is the State which, in the final analysis, is responsible for the non-discriminatory content of the education dispensed in these institutions and that the State may incur international responsibility in this area. Two types of relevant provisions may be mentioned here:

(a) The first, a general provision, relates to the State's efforts to give effect to the principle of non-discrimination: "States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education ... with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among ... racial or ethnical groups ..." (article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination).

(b) The second relates specifically to the State's responsibility in this area: "The States Parties to this Convention undertake to take all necessary measures to ensure the application of the principles enunciated in paragraph 1 of this article." (article 5, paragraph 2, of the 1960 UNESCO Convention).[81]

Hence, the obligation of result that is incumbent upon the State in relation to the non-discriminatory content of education cannot be interpreted as a simple negative obligation. It is also, and especially, a positive obligation to take the necessary steps to guarantee that the content of education is non-discriminatory and tolerant.

2. Monitoring of the obligations relating to the content of education

77. The content of education as it relates to racial discrimination and religious intolerance falls within the purview of several bodies involved in the monitoring of international human rights treaties whose objects include education, either fully or in part. As we have seen, this is due to the crosscutting nature of the right to education and to the variety of fields in which it is implemented and of its beneficiaries.

78. In accordance with their mandates, the various committees set up by the relevant international conventions take the content of education into account in a wide variety of ways. Paradoxically, it is not the committees with the most direct competence that have had the most satisfying results. According to one study, only the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of the Child take the content of education into account in their guidelines for periodic reporting by States.[82] Even so, these guidelines merely recall the general principles set out in the two Conventions and recommend that States should indicate in their reports what steps have been taken to ensure that the aims of education are consistent with the relevant provisions (articles 7 and 29, respectively).[83] On the other hand, the guidelines of the Committee on Economic, Social and Cultural Rights make no reference whatsoever to the obligations of States regarding the content of education.[84] This absence is all the more regrettable in that the Committee is the obvious body for the formulation of recommendations in this area: matters relating to education, and in particular, to its aims as set out in article 13, paragraph 1, of the Covenant, fall directly within the full competence of this Committee, and as such, its guidelines as well as the interpretations it has given would be extremely useful.[85]

79. Finally, the International Covenant on Economic, Social and Cultural Rights envisages no procedure like that established under article 41 of the International Covenant on Civil and Political Rights. This is indeed regrettable and does nothing to enhance the protection of the right to receive education in conformity with the objectives of non-discrimination and tolerance set out in article 13, paragraph 1.[86] It must be recognized, however, that the Human Rights Committee does not hesitate to monitor, through individual complaints, pursuant to article 26 of the International Covenant on Civil and Political Rights, compliance by States parties with their commitments under the International Covenant on Economic, Social and Cultural Rights - in other words, under an instrument which does not fall self-evidently within its purview and which has its own monitoring body. In reality, the Human Rights Committee monitors, not the content of the right to be protected but rather, in an audacious manner, the right not to be subjected to discrimination in conformity with article 26 of the International Covenant on Civil and Political Rights, even though the right in question is not covered in that instrument.[87]

II. FACTUAL ASPECTS OF RACIAL DISCRIMINATION AND RELIGIOUS INTOLERANCE IN EDUCATION

80. Taking account of the conceptual considerations presented in the first chapter of this study, we shall now discuss the practical and factual aspects of racial discrimination and religious intolerance in education, so as to be in a better position to make recommendations on how to combat them.[88] It is possible to draw up a typology on the basis of a range of examples of discriminatory practices throughout the world. This chapter does not seek to be exhaustive and is concerned less with the number of examples cited than with the category to which each of them can be assigned in the context of the overall purpose of the study. In this regard, it should be noted that factual aspects must cast light on people's attitudes to others, as well as the representation of their own identity, bearing in mind that, even where no minorities are present in a country, these may still be intolerant and discriminatory. Moreover, the choice of classification does not always have legal implications with respect to the violations committed; the intention is purely pedagogical. Thus, subclassifications may overlap within one and the same typology, and sometimes in any one example; likewise, other typologies can be used, and these may also

overlap.[89] We have opted for an approach that seems to us both the most directly relevant to the subject of this study, namely, one based on the concepts of *discrimination* and *intolerance* in *education*, and the most functional in terms of violations or ignorance of legal obligations. We shall start by looking at discrimination resulting from positive and often deliberate materially identifiable acts of States; such discrimination would arise from regulations, policies, instructions, measures and other material conditions affecting the organization or content of education put in place by States (sect. A). We shall then turn to discrimination or segregation resulting from a negative attitude on the part of States, where the discrimination arises from a State's omission or failure to take action (sect. B).[90]

A. Discrimination by action

81. An examination of certain aspects of practice in this regard reveals at least three scenarios for attitudes that may be classified as discrimination by action: impermeability, domination and marginalization.

1. Impermeability

82. Impermeability here means an intended or unintended situation in which it is impossible for all or even part of an education system to take account, at the conceptual and organizational levels, of the specific expectations of certain ethnic and/or religious minority groups. Thus, in countries with many indigenous populations, the official education systems might be either unable or unwilling to incorporate the values and components of those populations' cultural identity.[91] In such cases, discrimination arises when the education system established or supervised by the State does not meet to those groups' expectations with regard to equal rights and identity.

83. Several examples may be cited in this connection. Discrimination arises, for instance, when the education system organizes teaching whose form and content conflicts with the religious beliefs of pupils belonging to minority ethnic groups.[92] Again with regard to the content of the teaching provided, some examples concern families which consider that their children should not study certain subjects, arguing that, although they have no specifically religious content, they may conflict with their beliefs and convictions. Examples are sex education and instruction in sports or music, which some parents challenge on the grounds that these subjects are incompatible with specific religious beliefs.[93] However, education should also contribute to shaping the pupils' sensibility and taste, and to protecting them against societal ills such as teenage pregnancy and sexually transmitted diseases. A refusal to take account of that dimension in the teaching dispensed in private schools or in textbooks, for religious or moral reasons, conflicts not only with human rights and tolerance, but also with the "best interests of the child".[94]

84. Examples relating to the organization of teaching are also worthy of note. First, there is the thorny question of weekly restdays, which poses a particularly acute problem in multi-denominational classes. Do pupils not belonging to the majority religious group have the right to a holiday on the day celebrated as a holiday by their religion? Admittedly, the organization of differentiated restdays poses serious problems, particularly when there is a great religious diversity in one and the same school.[95] The same problem could arise with the

observation of certain religious rites or dress codes by some pupils in multi-denominational classes. Nonetheless, difficult as these questions may be, an answer must be found that is compatible with respect for human rights and takes account of the particularities of pupils from minority groups. As we have noted, the teacher's role and "tact" are crucial in this regard.

2. Domination and assimilation

85. The policy of assimilating the children of minorities, thereby making them lose their identity, is a most harmful form of discrimination because it sows the seeds for the continuation of discriminatory attitudes beyond the generations practising them at any given time. Referring to article 1 of the UNESCO Constitution, Mr. Federico Mayor emphasized that distinctions, notably those based on language or religion, "undermine the right to education and the cultural rights of numerous minorities; they sometimes raise unjust and intolerable barriers among citizens of the same State".[96] Domination can take a variety of forms. It may be physical and direct, or else grounded in psychological and moral conditioning. For example, it may take the form of an affirmation of the complete or at least partial superiority of the culture, language or religion of the group exercising such domination. This generally involves a glorification of the dominant culture, including the dominant language, and a devaluation of the culture, traditions, standards and languages of minorities. Such domination is especially perceptible in the field of education, this being the most suitable means of shaping the mindset of those dominating (children of the majority) and those dominated (children from minority groups).

86. Many examples can be cited. School curricula and textbooks are replete with examples of attitudes deriving from such psychological conditioning, affirming through both approximations and lies that the history, culture and language of the dominant group have always been and still are superior. Schoolbooks thus teach children, including those of the various religious minorities, that some of them are alien elements, whereas this is not, in fact, the case: representatives of these religious minorities are for the most part descendants of indigenous people who converted to the religions concerned.[97]

87. Domination sometimes goes beyond mere psychological conditioning and is actually accompanied by physical discrimination. An obvious case is that affecting minority groups under military domination, including raids made by the occupying forces in schools attended by the children of minorities.[98] Physical domination may also involve a ban on the use of the language of the minority group, even outside the classroom setting. Some children are thus reportedly beaten for using their own language at school and schoolmasters face arrest if they recognize the existence of the language and culture of the group in question.[99] This, too, is an obvious case of such domination or discrimination where power (historical, demographic, political, military, etc.) is transposed to the educational field to express directly or indirectly the position of dominance of a particular group, culture, religion or language. This transposition is all the more serious because it can shape the minds of young people as a result, and may lead to discriminatory attitudes being reproduced by successive generations.

88. Lastly, excessive attention to identity characteristics - which could be described as identity-related "narcissism" - as affirmed by the law or in school textbooks, or else by the dominant ideology can, even when there are no minorities in a country, lead to xenophobia, a negative representation of aliens and discrimination.

3. Marginalization or non-consideration

89. Marginalization is the direct consequence of the first two forms of discrimination, as it reflects the will of the dominant group to keep children, especially the children of minorities, from enjoying the benefits of education. An extreme case would be the denial of access to education for such children, particularly at the primary and secondary level. Such a denial, which is without doubt the most serious form of discrimination against the children of minorities and migrant workers, has been formally identified by the United Nations human rights treaty bodies as the denial of a fundamental right.[100] This sometimes takes the form of an intake capacity being described as insufficient in the schools attended by such communities. Of course, discrimination exists only when the education authorities are actually able, given the "availability" of financial, human and material resources, to increase school intake capacity, including for the benefit of the groups of pupils in question.

90. Another attitude consists in deliberately relegating to a subordinate status anything relating to the cultural features of minority groups. This may take the form of an ostensibly pedagogical approach that in fact promotes profoundly racist stereotypes. An example is the use, in one textbook, of a heavily discriminatory image including the phrase "The Gypsy has stolen the goose".[101] Because of the general context this tendentious phrase is likely to be taken as the truth or the norm, particularly in view of the eminently pedagogical value of the medium used.

91. A portrayal prejudicial to girls in society or advocating polygamy in textbooks is also apt to perpetuate discrimination between the sexes rather than fostering a spirit of tolerance among young pupils.[102] Likewise, imposing a strict code of conduct confining women to their homes and banning girls from going to school is a discriminatory and intolerant attitude contrary to the applicable principles of international law.[103] This can also be said of stereotypes encouraging a very negative portrayal of women belonging to a different ethnic and/or religious minority group. According to one author, this form of discrimination, which may be described as aggravated (gender-based, and racial and/or religious) discrimination, became a noticeable feature of the 1990s.[104]

92. Non-consideration may take the form of attitudes affecting the conditions of education of the pupil who, for ethnic reasons, may be forced to go to a school for the mentally disabled or systematically placed in the back row of the classroom. Thus, for example, "disproportionate numbers of Roma children are relegated to second-class educational facilities - 'special schools' - designed for pupils said to be suffering from intellectual or behavioural deficiencies".[105] Others are assigned to separate classes or discriminated against within the same school (separate graduation ceremonies, different meal times in the cafeteria).[106] These are examples of relatively clear-cut discrimination based on a failure to respect the most elementary basic rights. Where it affects children, this is likely to have very adverse consequences for the individuals concerned, their own self image and how other children see them, for their balanced integration into the society where they live, for social cohesion and, ultimately for the very unity of the State.

B. Discrimination by omission

93. Discrimination may sometimes appear in its passive form, i.e. when it results from an omission, in one of three ways: non-prevention, a refusal to take affirmative action and a lack or shortage of adequate resources.

1. Non-prevention

94. Non-prevention here means an attitude on the part of the State which consists in not taking the necessary measures to prevent situations of discrimination in the school setting. This is an omission upstream of a racial and/or ethnic situation likely to give rise to discriminatory behaviour.

95. The same applies to the training of teaching staff entrusted with multicultural or multi-denominational classes. Such training is all the more necessary since, aside from the fact that such staff may themselves be the source of discriminatory behaviour, the very composition of a multicultural class may lead to the propagation of racist stereotypes. The teachers' role here is to dispel such myths and stereotypes and help to foster in the children a culture of respect for others as much as for themselves. Wherever possible, teachers must, as we have already said, be sensitized to and trained in addressing the problems of multiculturalism and in suitable means for combating discrimination. This is certainly a key element for balanced education in a multicultural setting. While any deficiency here cannot in itself be considered as discrimination, it is bound to maintain, if not develop, discriminatory ideas and conduct. States have a fundamental role to play here in stemming, through organizational measures, one of the most frequent causes of discrimination (see chapter III below).

2. Refusal to take affirmative action

96. The second aspect of discrimination by omission results sometimes from ill will and sometimes from selective attitudes, and is reflected in the refusal to take special measures for the benefit of a group. This is what happens, for example, when teaching programmes are not adapted to the needs of minorities. There is discrimination when the omission gives rise to exclusion, a restriction or a preference based on race and likely to deny the child of a minority group the enjoyment of a fundamental right. Such acts of omission may, depending on the circumstances, mean that there are no bilingual classes or remedial classes in the official language when children have difficulties because of that language, or else that there is a lack of diversity in school curricula or teacher training.

97. In some cases, the minorities not only call for their specific characteristics to be taken into account but also ask to participate in the formulation and implementation of educational policies. Thus, denouncing a political party's discriminatory policy in the field of education, some indigenous representatives in one country drew a distinction "between education for Aborigines and Aboriginal education, with a view to highlighting the role that Aborigines should have in both designing and implementing educational policies".[107]

98. On the question of language teaching more specifically, the examples which may be cited are both very numerous and very diverse owing to the complexity of the socio-political problems

underlying this issue.[108] In this connection, while it is perfectly legitimate for a State to consider making an integrationist effort with the (or any one) official language, the concern to ensure respect for the self-esteem of all the individuals comprising that State must also be taken into account. Various forms of social behaviour of children and, later, of adults are contingent thereon. What is likely to be the attitude of a child who does not believe in himself or is taught to believe in the superiority of the language of the group to which he belongs (even if it is the majority)? Education is thus the crucible for a civic attitude in society as a whole, whatever its ethnic or religious make-up.

3. Lack or shortage of adequate resources

99. The failure to supply adequate resources to provide an education meeting the various aspirations for ensuring non-discrimination is a highly complex issue, objectively speaking, in view of the financial difficulties experienced by educational systems throughout the world, and particularly in the developing countries. In most of the countries surveyed by Francesco Capotorti, secondary education is not provided in minority languages. The reasons often given include a lack of funds, the unavailability of competent teaching staff and the desire not to fragment the educational system or, indeed, to impair national unity.[109]

100. In this connection, consideration must be given only to cases where such an attitude is based on discriminatory grounds and the shortage of funds affects the various ethnic and/or religious groups unequally. Thus, for example, in some European countries,[110] budget cut backs and austerity policies affect educational programmes intended for the children of minorities or emigrants (in particular, remedial classes). In this regard, the Committee on the Elimination of Racial Discrimination recently had occasion to point out that "the situation of Roma is a subject of particular concern since no improvements have been noted in the ... low educational level traditionally predominant among members of this minority"[111] and recommended that "measures of affirmative action should be adopted in favour of the Roma population, especially in the areas of education and vocational training ...".[112] In any event, it is only when such measures (or rather such non-measures) have an excessive impact and consequences for the enjoyment of the fundamental rights of a particular group that they may be described as prohibited discrimination.

III. CONCLUSIONS AND RECOMMENDATIONS

101. Many factors of widely varying impact and far from easy to understand exert a negative influence, as we have seen, on education in relation to racial discrimination and religious intolerance. These factors include historical circumstances, the social and economic conditions of groups and minorities, their demographic distribution in the territory, their cultural impoverishment, the prejudices of dominant groups, the status of the majority and minority languages, the political will of the Government and of the groups themselves, the shortage of resources and the lack of intercultural dialogue. It would certainly not be realistic to expect that taking action on these factors could achieve the desired results immediately: some of them are not, in fact, specific to education and would require major efforts by the State and the international community, as well as considerable resources, which would not necessarily be forthcoming at short notice; other factors might not require substantial resources but would need

a long-term commitment as they involve issues that, by definition, evolve slowly and not always straightforwardly. We shall distinguish here between domestic and international measures.

A. Domestic measures

1. Establishment of the educational system

102. The numerous measures needed here for the most part depend on the public authorities, although other actors in the educational field are also concerned.

(a) Prohibiting and punishing discrimination more severely

103. The State has an important responsibility to supervise the whole educational system (public and private) in order to detect any forms of racial discrimination or religious intolerance, whether de facto or de jure and prohibit or, where necessary, punish them. Under article 5, subparagraph (e) (v), of the International Convention on the Elimination of All Forms of Racial Discrimination, States parties undertake to prohibit and to eliminate racial discrimination, notably in the enjoyment of "the right to education and training". The 1960 UNESCO Convention against Discrimination in Education elaborates on this provision, dealing in particular with pupil admissions, the establishment of the educational system and the provision of grants and subsidies (see, in particular, article 3). States can draw on the Convention for their own specific legislation.

104. States should take specific measures, including with regard to the minimum age for admission to employment, and check that they are being effectively implemented to prevent children from vulnerable groups, especially ethnic and religious groups, from dropping out of school early.[113] However, the law has its limits. Regulations (even if properly applied), prohibitions, sanctions and so on can only combat manifestations of racial discrimination and intolerance, not suppress their underlying causes.

(b) Limiting as far as possible the emergence of a separate educational system

105. Whatever their merits, separate systems are unlikely to ensure the integration of minorities and immigrant communities, although, in certain circumstances - depending on the ethnic make-up of a society - they may protect the rights of ethnic and religious minorities. The State, however, has obligations in this regard which are not confined to non-interference; it has a vital role in making sure that access to these schools is non-discriminatory and that the education they provide is based on tolerance. The State also has positive obligations as regards recognition of the qualifications granted by these schools and the supply of various services, which, where provided, should be made available on a non-discriminatory basis: financial assistance for teacher training, buildings maintenance and the payment of subsidies and grants to students.

106. At all events, in accordance with article 5 of the 1960 UNESCO Convention and as shown by the very different experiences of many countries, separate educational facilities must not be a factor contributing to "reverse" discrimination or intolerance. Whatever their

designation (separate schools, separate lessons, minority schools), separate educational systems should not be run in such a way as to prevent minority groups from understanding the language, culture and religious beliefs of the majority.

(c) Training teachers

107. Even the best planned reforms are bound to fail if teachers are not properly trained and not committed in their work to combating discrimination and intolerance. The teacher's role cannot be reduced to that of a technician responsible for implementing prescribed procedures; the teacher is a professional capable of making judgements about the teaching approach that would be most appropriate and effective in a particular situation.[114] It is up to the teaching staff in particular to help alleviate tensions between pupils in mixed classes, to ensure that the school curriculum takes account of group diversity, and to promote pluralistic and tolerant education and a culture of non-discrimination. Moreover, teachers should be recruited not solely on merit, but also in the light of the specific needs of pluralistic societies and the importance of reflecting their ethnic variety. Similarly, intercultural education and the fight against xenophobia, racial prejudice and intolerance should be integrated into the official initial and further teacher training courses[115] and possibly brought to the attention of the relevant treaty bodies.[116]

(d) Taking appropriate linguistic measures

108. In a situation where there is linguistic diversity in a multi-ethnic school setting, linguistic reform can be central to the whole question of racial discrimination and religious intolerance. In the first place, the use of the mother tongue should not be seen by its users as a hindrance but as a factor in achieving balance, protecting their cultural identity and promoting a multicultural education that respects diversity, and as a factor contributing to integration and social cohesion. Linguistic reform certainly depends on the political will of the Government and the particular context in each State, but even when this will exist and special laws or constitutional provisions on the use of minority languages in State schools have been adopted and local circumstances permit, many technical, financial and pedagogical questions remain. They concern the choice of minority or indigenous languages,[117] the status of these languages (are they a vehicle for teaching or the subject of it?), the status in schools of an official language other than the mother tongue, the need for all children (not just those from minorities or indigenous peoples) to be bilingual, teacher training and recruitment, the financial consequences of multilingualism, etc.[118] There is obviously no adequate general answer to these questions and it is basically necessary to take account of local constraints and the ethnic and linguistic concentration of the population, the number of pupils from different ethnic backgrounds in each class and each school, etc.[119] In any case, any reform in this area should respect the existing balance and meet the specific needs of ethnic groups and minorities, especially when there is no majority.[120] It is likewise essential that each measure should promote social cohesion and integration since, as we have said, linguistic diversity can also be a divisive or discriminatory factor. It is furthermore important that minorities should be taught in both their own language and the majority or official language. Finally, attention must be paid to the financial implications of any linguistic reform, including the cost of teaching materials and teacher training.[121]

2. The content of education

(a) Changes in the content of school textbooks

109. Numerous papers and international instruments have developed the idea that education should project a positive image of oneself and others. In addition to the general provisions in the conventions already mentioned, article 31 of the ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries recommends that "history textbooks and other educational materials [should] provide a fair, accurate and informative portrayal of the societies and cultures of these peoples". According to the International Commission on Education for the Twenty-first Century, the first of the four pillars upon which education should be founded is "learning to live together by developing an understanding of others and their history, traditions and spiritual values".[122]

110. These changes in the content of textbooks should cover all educational curricula likely to shape the minds of children and adolescents and the way they will see others in the future - books on history, geography, languages, literature, general culture, civic and religious education, and children's stories, comics, etc. All the historical facts, or simply observations, tendentious explanations and insinuations that might stir up tensions and give a negative image of others should be removed and replaced by new teaching materials emphasizing the unity of mankind and the extraordinary variety of its cultural components and promoting mutual respect between different religious or linguistic ethnic groups. For this purpose, States could set up permanent and representative national mechanisms to consider the contents of school books and educational curricula and the steps to be taken to improve the curricula. They could also set up special inspection units or departments in education ministries whose task would include checking that the contents of school books and course books are non-discriminatory and tolerant; these departments could provide an account of their work in, say, annual reports, either for widespread distribution or for their superiors, so that the authorities could take the appropriate measures.

(b) Development of multicultural and intercultural education

111. As we have seen, how to combat "prejudices which lead to racial discrimination" by adopting "immediate and effective measures" (article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination) has not been adequately explained either in the international instruments or by the treaty-monitoring bodies concerned. This dimension involves, among other things, the duty to open up to others' cultures by providing differentiated education that respects and integrates cultural differences. Education - as a vital resource in the fight against discrimination and intolerance - should effectively contribute to the process of reconciliation between minorities as well as between minorities and the majority.

112. The school system could thus incorporate - where possible, of course - two fundamental concepts that would make the positive image of oneself and of others a reality in the educational system: multicultural education and intercultural education. Multicultural education refers to "educational policies and practices which meet the separate educational needs of groups in society which belong to different cultural traditions";[123] intercultural education covers "educational policies and practices by which the members of different cultures, whether in a

majority or minority position, learn to interact constructively with each other ... [and] learn about each other, about specific cultural characteristics, their respective histories and about the value of tolerance and pluralism".[124]

113. However, multicultural schooling, which depends on taking into account racial and/or religious diversity and on customizing the curriculum, is not sufficient on its own to teach tolerance. In order to avoid devaluing or overvaluing different cultures and thereby avoid a sense of hegemony, fear and intolerance, intercultural education based on a comparative view of different cultures must be introduced gradually, with due account being taken of local particularities.[125]

114. Free basic education should include, as we have said, a minimum element of interculturalism. The following criteria may be listed:[126]

(a) Learning two or more languages, depending on each State's requirements and the resources available;

(b) Openness to other countries' heritage: teaching the history, culture, languages and religions of minorities and of the majority is a vital pre-emptive tool to improve understanding of others and promote a positive image of others' culture;[127]

(c) The need to prepare multicultural, integrating educational curricula that value the knowledge of different cultures and civilizations and encourage a feeling of self-esteem;

(d) The adoption, in multi-ethnic and multi-faith societies, of general legislation that recognizes multicultural diversity and enshrines the principle of intercultural dialogue, particularly in and through schools;

(e) The use of preventive measures or penalties to combat factors that might jeopardize social cohesion and hinder the promotion of intercultural and multicultural education, such as xenophobic responses, assimilative tendencies, discrimination in access to education, non-recognition of historical and contemporary diversities, the propagation by the mass media of racist and intolerant stereotypes, the adoption of educational systems that result in a loss of the history, language and traditions of minority groups and indigenous peoples, and a failure to reflect society's racial, ethnic and/or religious make-up in the composition of teaching staff.[128]

115. Here again, teachers have an educational role of paramount importance: they should be tactful enough to encourage pupils to be inquisitive and to avoid the sometimes inconclusive results of intercultural education. They must exercise the greatest caution in this respect, and not expect a uniformly positive perception by pupils of the effects of intercultural education, regardless of the ethnic make-up of society. Objective factors (the weight of tradition, history, religion, social cohesion, etc.) and subjective factors (the pupil's mentality, the parents' circumstances, the educational dimension of the message, the teacher's perseverance, etc.) interact and have a considerable influence on a policy's success or failure.[129] It is important to note, therefore, that intercultural education cannot be imposed by decree and that the road to tolerance and positive recognition of others will be long and hazardous.

(c) Human rights education

116. The promotion of respect for human rights and fundamental freedoms, as affirmed in several international instruments, and first of all in article 55 of the Charter of the United Nations,[130] is a valuable tool for combating discrimination and intolerance in education. As proclaimed in the slogan that guided the work of the International Congress on the Teaching of Human Rights, organized by UNESCO in Vienna in 1978, "for human rights to be better respected they need to be better understood, and to be better understood they need to be better taught". Similarly, the Vienna Declaration and Programme of Action adopted in 1993 at the World Conference on Human Rights stresses how important it is for human rights to be part of the educational curriculum: "... human rights education, training and public information [are] essential for ... fostering mutual understanding, tolerance and peace" (A/CONF.157/23, II, D, para. 78). Consequently, with regard to the subject of this study, human rights education is one of the essential components of the strategy to combat racial discrimination and religious intolerance. The crucial question is how human rights can be "better taught".

117. In the first place, we should be glad that human rights education today is not the sole reserve of experts, particularly legal experts, but has become a common good and common ground for society as a whole, including - a point with which we are concerned here - for primary and secondary schoolteachers. This development should be consolidated in teacher recruitment and by offering in-service training and refresher courses on the subject for teachers and trainers, under the supervision of ministerial departments and with the assistance of the relevant national and international organizations. Human rights education requires, of course, adequate legal knowledge of the various instruments that address educational issues and, in particular, of those dealing more particularly with racial discrimination and religious intolerance. It is essential that "pupils ... be made aware that they have equal rights and duties ... [and] that national remedies and ... international remedies are available to them if their rights are violated".[131]

118. However, it is in our view the pedagogical dimension of human rights education that is important here, as it can be decisive in terms of the quality of the message received by schoolchildren and students. In the first place, as recommended by the Committee on the Elimination of Racial Discrimination, teaching about human rights and the problems of racial discrimination should be multidisciplinary so as to undermine scientifically the very foundations of racism. At the educational level considered in this study, an introduction to modern genetics, history, anthropology, psychology, etc. may well help to create tolerant minds open both to the unity of mankind and to the diversity and interdependence of cultures. As is rightly pointed out in the declaration entitled "Tolerance and diversity: a vision for the 21st century", submitted for signature to Heads of State and Government by the High Commissioner for Human Rights at the Millennium Summit in September 2000, "the first mapping of the human genome [is] an extraordinary achievement which not only reaffirms our common humanity but promises transformations in scientific thought and practice".

119. Next, it is important that human rights education should involve more than the provision of information and should constitute a comprehensive lifelong process shaping pupils' minds.[132] Human rights education, if it is not to become too abstract or too encyclopaedic - which might undermine its effectiveness - should also be incorporated into already existing subjects, while

dogma-free courses are developed. As has been rightly noted by one author talking about primary and secondary education, the necessary information relates not to human rights as such, or to their philosophical foundations, legal concepts or historical developments, but to the situations in which they come into play.[133] In short, rather than instilling theory into students or filling their heads with tedious facts, it is a question of developing reflexes and attitudes of tolerance and a natural respect for differences.

120. Finally, human rights education should not only use traditional teaching methods but should also be adapted to specific factors such as the children's age, social circumstances, ethnic and social origin, and so on. Making the messages easier to assimilate, for instance by publishing special comic strips and using lively teaching methods that involve the pupils more (role plays, audiovisual and interactive aids, etc.) and develop their critical faculties, can be very effective in combating racist stereotypes and intolerant views. Moreover, national institutions, ombudsmen and minority representatives can play a crucial role in monitoring and following up the implementation of national and international standards relating to the establishment of the educational system and the actual content of the courses.

3. Improving the intercommunity environment of the educational system

(a) Strengthening intercultural dialogue inside school

121. Regularly organizing cultural and leisure activities inside and outside school is a good way to arouse pupils' curiosity, strengthen mutual understanding and friendship and thus promote tolerance among children and adolescents from different ethnic or religious groups.

(b) Seeking new partnerships in education

122. Education is not the responsibility of the State alone. The educational process is the responsibility of society as a whole, not just of one particular sector of it. Several actors contribute to shaping children's minds: the family, the media, civil society, religious groups, the private sector, non-governmental organizations and others play a basic role in reinforcing or correcting what has been done in school in the area of non-discrimination and respect for differences. It is necessary, as suggested in article 7 of the World Declaration on Education for All (Jomtien, Thailand, 5-9 March 1990), to build new and revitalized partnerships to supplement and improve on the teaching provided in school. A code of conduct binding the various actors and containing guidelines on the role of each of them in relation to respect for the objectives of education, particularly in multi-faith or multi-ethnic societies, would be worthwhile.

123. Combating racism and intolerance in schools is also a question of belief. It is thus necessary to bring together representatives of the various religions at the national or international level, according to arrangements suited to each of them and to each country, in order to draw up a common strategy to prevent discrimination and intolerance in the education which children receive outside school. Likewise, human rights groups, whether they are from the majority or a minority, should contribute to the design and periodic review of educational policies.

B. International measures

1. Standard-setting

124. As rightly noted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 1998/11 of 20 August 1998, "the question of the right to education has not been sufficiently dealt with in the framework of the United Nations bodies responsible for the protection of human rights" (seventh preambular paragraph). A standard-setting effort should therefore be undertaken with a view to improving on existing international instruments by adopting texts and documents of an interpretative nature that would go beyond merely setting general goals and would clarify for the benefit of Governments and the international community precisely what strategy is required for non-discriminatory and tolerant education. The core of this strategy should include the preparation of school curricula and textbooks for teaching tolerance (especially religious tolerance) and the avoidance of racial discrimination in history and other sensitive subjects where instruction can shape pupils' minds, enhancing their perception of cultures and civilizations different from their own.

125. This standard-setting work could be formalized and supported by adopting specific resolutions dealing particularly with racial discrimination and religious intolerance in education at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, to be held in Durban, and at the international consultative conference on school education in relation to freedom of religion and belief, tolerance and non-discrimination, to be held in Madrid in 2001.

126. Finally, it seems to us that the instruments relating to racial discrimination and religious intolerance in education are generally quite dispersed, coming within the mandates of several treaty and non-treaty human rights bodies.[134] This dispersal, although justified given the cross-cutting nature of the right to be protected, nevertheless creates difficulties in determining which principles are applicable and to what areas. It therefore seems necessary, in our view, to centralize all the relevant legal and jurisprudential information, including through the use of Internet media.

2. The role of the relevant international organizations

127. UNESCO has a fundamental role to play, in accordance with its statutes and specific procedures,[135] in encouraging States to take appropriate steps to review and, where necessary, amend laws that appear to be discriminatory in the field of education on the grounds of religious beliefs or language.

128. The international financial organizations (the World Bank, the International Monetary Fund, regional banks, etc.) should target their action in developing countries so that the right to education is not too adversely affected by the debt burden and structural adjustment policies, in particular benefiting the most vulnerable minorities and ethnic groups in society.

129. Furthermore, States should be encouraged to ratify the human rights treaties, including those relating to discrimination in education, without reservations and to speed up the entry into force of instruments such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, of 18 December 1990.[136]

3. Follow-up and monitoring of States' obligations

130. Our study has shown that some treaty bodies, despite their competence in this area, do not have the resources, or sufficient resources, to ensure effective compliance by States with the principles of non-discrimination and tolerance, particularly as regards the content of education. In this respect, it is important that the various treaty bodies should include this issue in the guidelines for the reports that States parties must submit. Moreover, particular attention should be paid to the content of education in the work of the Human Rights Committee, and especially of the Committee on Economic, Social and Cultural Rights, as that content has unrivalled potential for giving specific substance to efforts to combat discrimination and intolerance.

131. In general, United Nations treaty bodies should attach greater importance to the consideration of racial discrimination and religious intolerance and their effects, including in relation to the education of the children of minorities and migrant workers.[137] Education is within the remit of several United Nations human rights bodies and specialized agencies. In order to avoid duplication or overlapping, there should be more cooperation and a greater exchange of information between these bodies and the relevant specialized agencies in areas of common interest. The cooperation between the Committee on the Elimination of Racial Discrimination and UNESCO deserves to be highlighted in this connection.[138] Other committees are particularly concerned: for example, with regard to the implementation of article 13 of the International Covenant on Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights can play an important role in coordinating and centralizing data on racial discrimination and religious intolerance.

132. It is also important to strengthen the monitoring mechanisms by adopting new instruments, such as an optional protocol to the International Covenant on Economic, Social and Cultural Rights, enabling the Committee concerned following efficient procedures, to consider complaints of violations of the right to equal access to education or regarding any education not based on non-discrimination and tolerance. Everyone recognizes that education is a fundamental human right and that without it other rights cannot be fully realized. It seems quite logical, therefore, to draw all the legal implications of this in ensuring the availability of appropriate remedies and effective protection for this right, as in the case of other human rights with more sophisticated monitoring mechanisms.[139] The same observation can be made about other categories of persons and other treaties with obviously weak rights-monitoring mechanisms.[140]

133. The special rapporteurs on contemporary forms of racism, the human rights of migrants, religious intolerance and the right to education should, within the terms of their respective mandates, combine their efforts and coordinate their activities with a view to systematically addressing racial discrimination and religious intolerance in education.

134. Finally, all these treaty and non-treaty bodies, and States too for that matter, should pay particular attention to aggravated discrimination in education, that is, discrimination against

children because of their multiple identities (based on race/religion, race/gender or race/gender/religion), which tends to involve not just an accumulation or ordinary addition of offences but creates a new, more serious offence that should consequently be subject to a special legal regime.[141]

4. Information gathering

135. In the field of education, especially primary and secondary education, there appears to be a glaring lack of general information and data on the implications of racial discrimination and religious intolerance, particularly in the lives of children from minorities and children of migrant workers.[142] The available statistics are not yet broken down with reference to the types of discrimination prohibited by international law. However, according to the *Report on the World Social Situation 1997*, it seems that "in almost all multi-ethnic countries, the drop-out rates among some ethnic minorities [are] higher than [those] of dominant groups or the majority" (E/1997/15 - ST/ESA/252, chap. V, sect. A, para. 18). The development of a preventive strategy to combat the various types of discrimination therefore requires the systematic collection, not only at the national and regional levels but also, more importantly, at the international level, of specific data on the situation of such children and, in particular, data on literacy rates, school drop-out rates and unemployment rates, broken down by ethnic and/or religious group and compared with the rates for society as a whole.[143] The collection of such data should also include the content of education, the teaching approach used in certain subjects related to interculturalism, the state of language teaching for the school population as a whole, teaching in the language or languages of minorities, religious education, and information on the best practices of States with regard to the prevention of racial discrimination and religious intolerance, in order to help other States save time and money by not repeating the same mistakes. Collecting data of this kind is essential if the effects of educational policies on children from minorities or ethnic/religious groups are to be measured and, where necessary, rectified.

5. The media and means of communication

136. The media and media representatives should be involved in regular campaigns to raise awareness of the problems of racial discrimination and religious intolerance in school education.

137. States and the relevant intergovernmental organizations should coordinate their efforts in order to take advantage of the enormous opportunities offered by modern means of mass communication. They should envisage, in particular, using the Internet more widely to promote tolerance and combat racism in schools; they should give greater prominence to the content of education in the fight against discrimination and intolerance by setting up web sites and specific programmes aimed at schools all over the world.[144] The general thrust of these programmes could be concentrated on highlighting the unity of mankind and cultural diversity, the shared values of tolerance and an intercultural approach to the history of civilizations and religions. In the area of education, they could include training and documentation programmes focused on the prevention of discrimination and intolerance. Likewise, they could be particularly useful in raising human rights awareness by disseminating positive information about minorities and immigrants so that school children become less receptive to racist propaganda, xenophobia and

intolerant attitudes.[145] In sum, the Internet can also be a valuable tool in fighting discrimination and a formidable defence against the use of the web for propaganda purposes in schools.

138. While education is a right aiming at personal fulfilment, it has an important social and, indeed, universal dimension, precisely because of the phenomenal development of the mass media and the closer geographical linkage between peoples. All action related thereto should take this aspect into account. The world that education must try to reflect should be one revealing the identity of mankind in all its diversity, a world in which meeting people different from oneself is not a source of tension but an enriching daily reality, a world in which every person and every culture have their place in the great jigsaw of the human family. However, it should never be forgotten that, as Federico Mayor put it so well, "an encounter with otherness is an encounter with ourselves. But the road that leads to the statement '*we* are the others' is fraught with pitfalls."[146]

Notes

[1] Paragraph 1 (a) of the recommendation concerning education for international understanding, cooperation and peace and education relating to human rights and fundamental freedoms, adopted by the UNESCO General Conference at its eighteenth session, Paris, 19 November 1974.

[2] Study on the implementation of article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination, document submitted by the Committee on the Elimination of Racial Discrimination to the second World Conference to Combat Racism and Racial Discrimination, held in 1983 (A/CONF.119/11, para. 55).

[3] On the conceptual differences and similarities between "primary" and "basic" education, see E/CN.4/1999/49, para. 15. See also paragraph 9 of General Comment No. 13 of the Committee on Economic, Social and Cultural Rights, as referred to in paragraph 2 above.

[4] *Les minorités dans le monde*, Paris, Desclée de Brouwer, 1998, p. 159.

[5] See paragraph 1 of General Comment No. 13. See also Patrice Meyer-Bisch, "The right to education in the context of cultural rights", background paper submitted to the Day of General Discussion on the right to education organized by the Committee on Economic, Social and Cultural Rights (E/C.12/1998/17, para. 3). The Special Rapporteur on the right to education considers that, from the human rights viewpoint, education is an end in itself rather than merely a means for achieving other ends and rightly distinguishes between education ("a commodity which is traded against a price") and the right to education (E/CN.4/1999/49, paras. 13 and 14).

[6] See José L. Gomez del Prado, "Comparative analysis of the right to education, as enshrined in articles 13 and 14 of the Covenant and provisions contained in other ... treaties and the machinery established ... for monitoring its implementation", background paper submitted to the Day of General Discussion referred to in note 5 (E/C.12/1998/23, para. 3).

[7] In this connection, see Mustapha Mehedi, "The realization of the right to education" (E/CN.4/Sub.2/1998/10, paras. 2, 5 and 6) and "The content of the right to education" (E/CN.4/Sub.2/1999/10, paras. 20 et seq.). See also Manfred Nowak, "The right to education" in A. Eide et al., *Economic, Social and Cultural Rights*, Dordrecht, M. Nijhoff, 1995, p. 198. Along the same lines, reference may be made to the Vienna Declaration and Programme of Action (A/CONF.157/23, Part I, para. 5).

[8] If we accept the didactic definition contained in the French dictionary *Le Robert*, culture is "the set of acquired forms of behaviour in human society" and, insofar as culture encompasses all that is inherited or transmitted, particularly through education, the right to culture overlaps to a considerable extent with the right to education. In this connection, two relevant texts are cited by Francesco Capotorti in paragraphs 222 and 339 of his "Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities" (Geneva and New York, 1991). Human Rights Study Series, No. 5 (Revised version of document E/CN.4/Sub.2/384). United Nations publication, Sales No. E.91.XIV.2): the first is by Michel Leiris (*Race and civilization*, Paris, UNESCO, 1951, pp. 20 and 21) and the second by Boutros Boutros Ghali, "The right to culture and the Universal Declaration of Human Rights", *Cultural Rights as Human Rights*, Paris, UNESCO (SHC.68/XIX.3/A, p.73).

[9] Article 26, paragraph 1, of the Universal Declaration of Human Rights; article 13, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights; principle 7 of the Declaration on the Rights of the Child; article 28, paragraph 1, of the Convention on the Rights of the Child; article 1 of the American Declaration of the Rights and Duties of Man; article 8 of the African Charter of Human and Peoples' Rights; article 2 of the first Protocol to the European Convention on Human Rights, the negative wording of which, "no person shall be denied the right to education", must not be understood as involving only an obligation to refrain.

[10] This explains why the words "Every person has the right to education" are used not in the body of the Convention, but in one of the first two preambular paragraphs referring to the international instruments forming the substantive basis of the Convention.

[11] See Mustafa Mehedi, "The realization of the right to education" (E/CN.4/Sub.2/1998/10, para. 6).

[12] When the absorption capacity of primary or secondary schools is smaller than the number of school-age children, the provisions relating to free and compulsory education are merely obligations of means whose gradual fulfilment by the State will depend on the available financial and human resources.

[13] In this connection, see, for example, the Council of Europe Framework Convention for the Protection of National Minorities, article 12, paragraph 3, of which provides for "equal opportunities for access to education at all levels for persons belonging to national minorities".

[14] Article 26, paragraph 1, of the Universal Declaration; article 13, paragraphs 2 and 14, of the Covenant; article 28, paragraph 1, of the Convention on the Rights of the Child. See also the Committee's General Comment No. 11 on primary education which is compulsory and free of charge (E/C.12/1999/4, paras. 6 and 7).

[15] See Mustapha Mehedi, "The content of the right to education" (E/CN.4/Sub.2/1999/10, para. 58), who refers to the document by Patrice Meyer-Bisch mentioned in note 5.

[16] See the report of the Montreal International Seminar on Intercultural and Multicultural Education, 29 September-2 October 1999 (E/CN.4/Sub.2/AC.5/2000/WP.4, para. 24).

[17] Doris Angst Yilmaz, "Remedies for victims of discrimination in education: the problem of separate classes for nationals and foreigners", background paper submitted to the Expert Seminar on Remedies Available to the Victims of Acts of Racism and Racial Discrimination, organized from 16 to 18 February 2000 in preparation for the World Conference against Racism (HR/GVA/WCR/SEM.1/2000/WP.2, para. 5); in paragraph 6 of this document, the author proposes that separate classes should quite simply be dispensed with.

[18] This might be the case of the Aboriginal population in Australia. In this connection, see the following document of the Working Group on Indigenous Populations containing information from an Aboriginal education leader: Jack Beetson, "Indigenous peoples and our right to an independent indigenous education system" (E/CN.4/Sub.2/AC.4/1998/2, para. 7, p. 9).

[19] The establishment of institutions separated by gender may be based on primarily religious reasons or on a particular approach to religion and public morals.

[20] See General Comment No. 13 of the Committee on Economic, Social and Cultural Rights on article 13 of the Covenant (E/CN.12/1999/10).

[21] At first glance, the wording of article 2 (b) may suggest that reference is being made to private educational institutions (religious, for example) and that it therefore duplicates that of article 2 (c)), but this argument is not valid because it would then not be clear why the Convention took the trouble to make a distinction between these different types of institutions in different provisions and why the concept of "separate institutions" should mean that "separation" is to be understood in relation to institutions belonging to the public educational system, not in relation to private institutions.

[22] The four main pillars of education are learning to know, learning to do, learning to live together and learning to be; see Jacques Delors, *Learning: The Treasure Within*: Report to UNESCO of the International Commission on Education for the Twenty-first Century, Paris, UNESCO/Odile Jacob, 1996, pp. 99 *et seq.*

[23] Fribourg Group, Draft Declaration on Cultural Rights, Fribourg, 1998, p. 12, cited by Mustapha Mehedi, "The content of the right to education" (E/CN.4/Sub.2/1999/10, para. 26).

[24] See, inter alia, Francesco Caportorti, op. cit., (note 8), paras. 345 and 346.

[25] See the UNESCO communication entitled "Methodological notes on linguistic reform to promote indigenous languages", paragraphs 1 and 2, in Working Group on Indigenous Populations document E/CN.4/Sub.2/AC.4/1998/2, pp. 3-7.

[26] See "Education rights of minorities: the Hague Recommendations", working paper submitted to the Working Group on Minorities (E/CN.4/Sub.2/AC.5/1997/WP.3).

[27] Article 31, paragraph 1 of the 1969 Vienna Convention on the Law of Treaties.

[28] Judgement of 23 July 1968, series A, No. 6, cited in Vincent Berger, *Jurisprudence de la CEDH*, fifth edition, Paris, Sirey, 1996, para. 1156.

[29] See Gómez del Prado, op. cit. (note 6), who observes, in note 7, that, for F. Coomans, the use of the term "recognize" in, for example, article 5, paragraph 1 (c), of the 1960 Convention is closely linked to the idea of progressive realization, unlike the terms "guarantee", "respect" or "ensure", which imply a stronger obligation.

[30] See also article 45 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (not yet in force), which uses very permissive language: "States of employment may provide special schemes of education in the mother tongue of children of migrant workers ...".

[31] These articles regulate the "special measures" or differential treatment in favour of certain racial or ethnic groups which are not deemed racially discriminatory. See the Committee's annual report for 1976 (A/31/18, p. 30).

[32] See, for example, the 1996 annual report of the Committee on the Elimination of Racial Discrimination (A/51/18, pp. 28 and 33) and its 1973 annual report (A/9018, p. 65).

[33] See also article 14, paragraph 3, of the European Council Framework Convention. According to the case law of the Committee on the Elimination of Racial Discrimination, the majority language should also be taught (see the Committee's annual report for 1983 (A/38/18, p. 54)).

[34] See also article 8, paragraph 4 of the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

[35] There is no contradiction between the two aspects, since it is not the type of education guaranteed that is compulsory, but schooling for children.

[36] See Mehedi, "The content of the right to education" (E/CN.4/Sub.2/1999/10, para. 46).

[37] Principle 7 of the Declaration of the Rights of the Child; see also article 5, paragraph 2 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, of 25 November 1981, which refers to "the best interests of the child [as] being the guiding principle" in religious education.

[38] See article 26, paragraph 3, of the Universal Declaration of Human Rights.

[39] Article 13, paragraph 4, of the International Covenant on Economic, Social and Cultural Rights: "liberty of individuals and bodies to establish and direct educational institutions ..."; article 2 (c) of the 1960 UNESCO Convention: "The establishment or maintenance of private educational institutions ...". See also, article 13, paragraph 5, of the Protocol of San Salvador, and article 29, paragraph 2, of the Convention on the Rights of the Child.

[40] "The States parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for the children schools other than those established by the public authorities...". See also article 5, paragraph 1 (b), of the 1960 UNESCO Convention. The Committee on Economic, Social and Cultural Rights notes in its General Comment No. 13 that this liberty also extends to nurseries (E/C.12/1999/10, para. 30).

[41] The meaning of "private" schools varies considerably from one country to another. Generally speaking, they are schools that are not administered by the State; they may be traditional profit-making institutions or other kinds of institutions, such as religious schools, minority schools or schools established by indigenous groups.

[42] There are two possibilities open to children belonging to minorities: either they attend schools for minorities established by the State, or they establish their own schools under State supervision.

[43] See Human Rights Committee, *Carl Henrik Blom v. Sweden*, communication No. 191/1985, *Selected decisions of the Human Rights Committee under the Optional Protocol*, CCPR/C/OP/2, pp. 227-230. See also European Commission of Human Rights, *André Simpson v. the United Kingdom*, application No. 14688/89, decision on admissibility of 4 December 1989, *Decisions and reports*, vol. 64, p. 201.

[44] Human Rights Committee, *Waldman v. Canada*, communication No. 694/1996: the Committee decided that the fact that a distinction in favour of Catholic schools is enshrined in the Constitution does not render it reasonable and objective, even though Catholic schools are part of the public school system.

[45] Article 13, paragraph 4, of the International Covenant on Economic, Social and Cultural Rights.

[46] See section B below for a discussion of the content of education.

[47] Article 13, paragraphs 3-4, of the International Covenant on Economic, Social and Cultural Rights. See also article 2 (c) and article 5, paragraph 1 (b) of the 1960 UNESCO Convention; and article 29, paragraph 2, of the Convention on the Rights of the Child.

[48] See article 2 (c) of the 1960 UNESCO Convention. This convention defines discrimination inter alia with reference to consideration relating to the standard of education of an individual or group (art.1, para. 1 (b), or to situations incompatible with the dignity of man (art. 1, para. 1 (d)).

[49] The International Covenant on Economic, Social and Cultural Rights does not explicitly include a provision of this kind, but the objectives of non-discrimination, tolerance and friendship among ethnic and religious groups mentioned in article 13, paragraphs 1, 3 and 4, effectively encompass article 2 (c) of the 1960 Convention and thus prohibit discrimination in the area of private education that leads to the exclusion of a racial or religious group.

[50] See article 18, paragraph 1, of the International Covenant on Civil and Political Rights and note 14 to paragraph 28 of the above-cited General Comment No. 13. In the same connection, see article 1, paragraph 1, and article 5, paragraph 2, of the 1981 Declaration concerning the elimination of religious intolerance cited in note 37.

[51] Article 13, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights reproduces only the part of the sentence concerning respect for the liberty of parents "to ensure the religious and moral education of their children in conformity with their own convictions".

[52] The international instruments are not very explicit on this point; see, in particular, the second clause of article 5, paragraph 1 (b), of the 1960 UNESCO Convention.

[53] See, in this connection, article 12 of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which is not yet in force; see also article 5, paragraph 2, of the 1981 Declaration already cited (note 37). The obligation lies with States even in cases of armed conflict; see article 78 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I): "... each child's education, including his religious and moral education as his parents desire, shall be provided ... with the greatest possible continuity". For an exhaustive study of all the instruments, including regional treaties, see Gomez del Prado, op cit (note 6).

[54] This obligation is a corollary of the general principle of freedom of religion as set forth in article 18, paragraph 2, of the International Covenant on Civil and Political Rights and proclaimed, moreover, in the constitutions of many States, including those where one religion has been declared the State religion: "no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. See, in this connection, the ruling of the European Commission of Human Rights according to which the State must respect within the public school system the beliefs of parents. *Kjeldsen, Busk Madsen and Pedersen v. Denmark*. Report of the Commission, 21 March 1975, Court Decisions, vol. 2, series B, pp. 44 and 46.

[55] General Comment No. 13, paragraph 28. See also, in this connection, paragraph 6 of General Comment No. 22 of the Human Rights Committee.

[56] This expression is used in article 5, paragraph 2, of the Declaration on Race and Racial Prejudice, dated 27 November 1978.

[57] Expression used in article 1, paragraph 1, of the same Declaration.

[58] Article 14 of the Convention on the Rights of the Child establishes the child's right to freedom of thought, conscience and religion, subject to respect by the State for the guiding role played by the parents.

[59] See also, in this context, General Comment No. 22, paragraphs 6 and 8, where the Human Rights Committee indicates that the restrictions provided for in the International Covenant on Civil and Political Rights to its article 18 under paragraph 3 thereof must be strictly interpreted.

[60] See E/CN.4/1999/19, para. 68. See also article 28, paragraph 2, of the Convention on the Rights of the Child.

[61] Opinion No. 346893, *Revue universelle des droits de l'homme*, vol. 3, No. 4, 17 May 1991, p. 152.

[62] Definition given by Henri Capitant in his *Vocabulaire juridique* and cited by Claude Durand-Prinborgne, *La laïcité*, Paris Dalloz, 1996, p. 9. The author adds that the literature contains no legal definition of secularity.

[63] Michel Combarnous, "L'enfant, l'école et la religion", *La revue administrative*, Special No. 2, *Le Conseil d'Etat et la liberté religieuse*, Paris, PUF, p. 76.

[64] They deal more with the "objectives" of education than with its content, the two being, of course, closely linked. See below the formulation used in these instruments. In its General Comment No. 13 the Committee on Economic, Social and Cultural Rights in fact uses the expression "aims and objectives of education" (E/C.12/1999/10, para. 4).

[65] As pointed out, without further commentary, by the Committee in paragraph 4 of its General Comment No. 13, "these objectives reflect the fundamental purposes and principles of the United Nations as enshrined in articles 1 and 2 of the Charter". Several of those provisions do not concern the question of education, nor for that matter the question of human rights. It is article 1, paragraphs 3 and 4, of the Charter which seem to us most relevant to concerns regarding education.

[66] See, for example, the 1960 UNESCO Convention (art. 5, para. 1 (a)).

[67] This article 7 reproduces the wording of article 8 of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, dated 20 November 1963, but differs from it in two respects, the first concerning the magnitude of the objective to be attained: article 8 of the Declaration seems more ambitious and aims at "eliminating" discrimination, whereas article 7 of the Convention, probably because of the persistence of discrimination in the world of the 1960s, seems more modest and aims only at "combating prejudices which lead to racial discrimination ...". The ninth preambular paragraph of the 1965 Convention expresses, moreover, alarm at the "manifestations of racial discrimination still in evidence in some areas of the world ...". On the other hand, the scope ratione personae of article 7 of the Convention is

wider and, in addition to racial groups, covers ethnic groups; and that is liable also to concern other groups and minorities which are defined more particularly by cultural or religious characteristics. On this issue, see our study "Racial discrimination and religious discrimination: identification and measures" (A/CONF.189/PC.1/7, para. 26 f.).

[68] In these provisions it is stipulated in particular that: "Education should promote understanding, tolerance, peace and friendly relations between the nations and all racial or religious groups".

[69] General Comment No. 13 dates from 8 December 1999 and No. 11, on article 14 of the Covenant, from 10 May 1999 (E/C.12/1999/4). Similarly, it was only in 1997 that the human rights bodies undertook, for the first time, an at least systematic and in-depth study of that right.

[70] See, in this connection, the 1978 UNESCO Declaration on Race and Racial Prejudices (art. 3) and the World Declaration on Education for All (Jomtien, 1990) (art. I, para. 2).

[71] Fatsah Ouguergouz, *La Charte africaine des droits de l'homme et des peoples. Une approche juridique des droits de l'homme entre tradition et modernité*, Paris, P.U.F. 1993, p. 125. Likewise, article XI, paragraph 2, of the African Charter for the Rights and Welfare of the Child (not yet in force) states that the object of education is, inter alia, "to preserve and strengthen traditional and positive African moral and cultural values".

[72] Report of the Consultation on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Bellagio, Italy, from 24 to 28 January 2000, A/CONF.189/PC.1/10, para. 9.

[73] See, for example, article 4 of the International Covenant on Economic, Social and Cultural Rights and of the International Covenant on Civil and Political Rights, as well as articles 1, paragraph 4, and 2, paragraph 2, of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965.

[74] See article 20, paragraph 2, of the 1965 Convention, which, while it reflects the general principle, drawn from customary law, whereby reservations incompatible with the object and purpose of a treaty are prohibited, goes still further: it quantifies incompatibility by giving the number of other States parties (two thirds) that must object, something which is relatively rare in international conventions.

[75] Article 9 of the 1960 UNESCO Convention.

[76] See, inter alia, the World Association for the School as an Instrument of Peace, "Strengthening regional and international mechanisms for better monitoring of the content of education" (HR/GVA/WCR/SEM.1/2000/WP.1, paras. 8 to 10), a document submitted to the expert seminar on remedies available to the victims of acts of racism and racial discrimination, held from 16 to 18 February 2000 in preparation for the World Conference against Racism.

[77] Cited in the study mentioned in note 76 (HR/GVA/WCR/SEM.1/2000/WP.1, para. 9).

[78] Similarly, see article 6, paragraph 1, of the Council of Europe's Framework Convention for the Protection of National Minorities: "The Parties shall encourage" and "take effective measures ...".

[79] Nevertheless, the principle of non-discrimination takes the form of an obligation of result, even with regard to the implementation of the right to education, once the State has set up its educational system and, of course, has the means to ensure the realization of this right. In this connection, see the principle of non-discrimination as set out in article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights, the same naturally being true of article 13 of that Covenant. Similarly, General Comment No. 13 of the Committee on Economic, Social and Cultural Rights indicates that article 13, paragraphs 2 (a), 3 and 4, of the Covenant impose obligations which are of immediate effect (HRI/GEN/1/Rev.4, 7 February 2000). See also General Comment No. 18 on article 26 of the International Covenant on Civil and Political Rights, in which the Human Rights Committee indicates that the application of the principle of non-discrimination contained in article 26 of the Covenant is not limited to those rights which are provided for in the Covenant (HRI/GEN/1/Rev.4, para. 12).

[80] The hesitant wording of article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights ("... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant") does not relate to the principle of non-discrimination set out in paragraph 2 of that article. See General Comment No. 13, in which the Committee on Economic, Social and Cultural Rights states that the principle "applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds" of discrimination (E/C.12/1999/10, para. 31); similarly, see the same Committee's General Comment No. 3 (HRI/GEN/1/Rev.4, paras. 1 and 2), which speaks in this connection of a "minimum core obligation". See also the following two documents, submitted for the day of general discussion on the right to education organized by the Committee on Economic, Social and Cultural Rights: Paul Hunt, "State obligations, indicators, benchmarks and the right to education", E/C.12/1998/11 (para. 6) and Audrey Chapman and Sage Russel, "Violations of the right to education", E/C.12/1998/19 (paras. 7 *et seq*).

[81] As we have seen, paragraph 1 refers to the objectives of education: "Education shall be directed to ...".

[82] See the study mentioned in note 76 (HR/GVA/WCR/SEM.1/2000/WP.1, paras. 12 *et seq*).

[83] Ibid, para.13. See the Committee on the Elimination of Racial Discrimination, "General guidelines regarding the form and contents of reports to be submitted by States parties" (CERD/C/70/Rev.5, 5 December 2000, para. 9) and Committee on the Rights of the Child, "General guidelines regarding the form and contents of periodic reports", CRC/C/58, paras. 112 and 113.

[84] "Revised general guidelines regarding the form and contents of reports to be submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights" (E/C.12/1991/1, guidelines 1 to 9 relating to article 13).

[85] The section of the above-mentioned General Comment No. 13 relating to the obligations of States is particularly vague: "States parties are required to ensure that curricula, for all levels of the educational system, are directed to the objectives identified in article 13 (1). They are also obliged to establish and maintain a transparent and effective system which monitors whether or not education is, in fact, directed to the educational objectives set out in article 13 (1)" (E/C.12/1999/10, para. 49).

[86] It has proved impossible to adopt a draft optional protocol to allow for communications and the consideration of complaints by the Committee; in this connection, see E/CN.4/1997/105.

[87] See, for example, the cases *Carl Henrik Blom v. Sweden* and *Waldman v. Canada* cited in notes 43 and 44, as well as the Human Rights Committee's General Comment No. 18, paragraph 12, on article 26, of the Covenant cited in note 79 (*in fine*).

[88] See chapter III of this study.

[89] Discrimination regarding access to and the content of education, or discrimination resulting from violation of obligations concerning respect for and protection and realization of the right to education. On the latter classification, see Chapman and Russel, op. cit. (note 80 *in fine*), para. 17; see also Mehedi, "The realization of the right to education" (E/CN.4/Sub.2/1998/10, para. 14).

[90] Of course, as we have indicated, the author of a violation by act or omission is not always the State; it may, for instance, be the education authorities in the private educational system, or the child's parents or guardians; but it is the State that is ultimately responsible for its educational system's compliance with its international obligations.

[91] See Beetson, op. cit. (note 18), pp. 8 to 10 of the French text, para. 5.

[92] See, on a Ministry of Education of Quebec Web site, "Accommodating religious and cultural diversity in the school (http://www.meq.gouv.qc.ca/dscc/sup8-la.htm; case 1).

[93] Ibid, case 6 concerning allegations by Catholic parents from Latin America objecting on grounds of cultural particularity.

[94] See articles 3 and 18 of the Convention on the Rights of the Child; see also addendum 1 to the report by Katarina Tomaševski (E/CN.4/2000/6/Add.1, para. 87).

[95] See, on a Ministry of Education of Quebec Web site, "Accommodating religious and cultural diversity in the school" (http://www.meq.gouv.qc.ca/dscc/sup8-la.htm, case 8).

[96] UNESCOPRESS On-line, No. 98-161, 28 July 1998, cited by Jonathan A. Kusi, "La compétence de l'UNESCO en matiere des droits de l'homme: Réflexions critiques sur quelques problèmes spécifiques", in *Les droits de l'homme à l'aube du XXIème siècle*, Karel Vasak Amicorum Liber, Bruylant, Bruxelles, 1999, p. 621.

[97] See "Study on the effects of racial discrimination on the children of minorities and those of migrant workers in the fields of education, training and employment" (A/CONF.189/PC.1/11, para. 10).

[98] Ibid., para. 14.

[99] Ibid., para. 9.

[100] Ibid., note 13.

[101] Ibid., para. 13.

[102] See Katarina Tomaševski (E/CN.4/2000/6/Add. 1, para. 80).

[103] See Gómez del Prado, op. cit. (note 6), para. 88.

[104] See Tomaševski, E/CN.4/1999/49 op. cit., (note 3), para. 72. See also Amor, "Racial discrimination and religious discrimination: identification and measures" (A/CONF.189/PC.1/7, paras. 109-110).

[105] See the report of Mr. Maurice Glèlè-Ahanhanzo on racism and racial discrimination (E/CN.4/1999/15, para. 84).

[106] Ibid.

[107] Commission on Human Rights, Report of the Working Group on Indigenous Populations (E/CN.4/Sub.2/1998/16, para. 64).

[108] Ibid., paras. 68-70.

[109] Op. cit. (note 8) paras. 517 *et seq*. See also UNESCO, *L'emploi des langues vernaculaires dans l'enseignement*, Paris, 1953, p. 50.

[110] See, in particular, Finland's fourth periodic report to the Committee on the Elimination of Racial Discrimination (CERD/C/320/Add.2, chap. V, sect. E, subsect. 4).

[111] Report of the Committee on the Elimination of Racial Discrimination on its fifty-fourth and fifty-fifth sessions (1999) (A/54/18, para. 282).

[112] Ibid., para. 286.

[113] See article 7, paragraph 2, of the 1999 ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour: "Each Member shall, taking into account the importance of education in eliminating child labour, ... ensure access to free basic education."

[114] See UNESCO, *World Education Report*, Paris, 1998, p. 65.

[115] See Montreal International Seminar, op. cit. (note 16), para. 26.

[116] See, for example, Committee on the Elimination of Racial Discrimination, "General guidelines regarding the form and contents of reports to be submitted by States parties" (CERD/C/70/Rev.5, 5 December 2000, art. 7 A).

[117] The problem is further complicated when several languages are spoken or when a language is not suitable for teaching purposes. For more on these questions, see UNESCO, *The Use of Vernacular Languages in Education*, Paris, 1953, pp. 56–61.

[118] See, in the document cited in note 25 (E/CN.4/Sub.2/AC.4/1998/2), the communication from UNESCO entitled "Methodological notes on linguistic reform to promote indigenous languages" (paras. 3-4); see also, in the same document, the communication from Terralingua entitled "Linguistic human rights in education" (para. 12); and, finally, see Tomaševski, op. cit. (note 3), para. 66.

[119] Capotorti, in the study cited in note 8, reports on the arrangements in many countries, depending on the groups in each country; some countries offer a range of choices to minorities (see para. 499 ff.).

[120] Capotorti (para. 347) cites the case of a country where the prime innovation was to define literacy in terms of the local languages spoken by the two ethnic groups in that country.

[121] See Tomaševski (E/CN.4/2000/6/Add.1); the author believes that linguistic reform does not entail any extra costs and even allows savings to be made in educational spending.

[122] See the report by Jacques Delors cited in note 22.

[123] See the report of the Montreal International Seminar on Multicultural and Intercultural Educational (note 16), para. 6.

[124] Ibid.

[125] See A/CONF.189/PC.1/11) (note 97), paras. 32–33.

[126] In this connection, see Mehedi, E/CN.4/Sub.2/1999/10 (note 15), para. 58; Montreal International Seminar, op. cit. (note 16), para. 12; and Meyer-Bisch, E/C.12/1998/17 (note 5), para. 21.

[127] For a similar argument, see "Study on the implementation of article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination", op. cit. (note 2), para 49.

[128] See, in particular, the Montreal International Seminar, op. cit. (note 16), para. 13.

[129] A UNICEF report cites the case of an Italian teacher who had a pupil of Pakistani origin and who tried an intercultural approach by highlighting Pakistani culture in every class. The approach failed as the child felt that he was being put on show, saying, "I'm sick of being Pakistani, I just want to be a child" (quoted in A/CONF.189/PC.1/11 (note 97), para. 34, note 41).

[130] See also, particularly in the context of education, article 26, paragraph 2, of the Universal Declaration of Human Rights, article 13, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, article 29, paragraph 1 (b), of the Convention on the Rights of the Child, and article 5, paragraph 1 (a), of the 1960 UNESCO Convention.

[131] "Study on the implementation of article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination", op. cit. (note 2), para. 54.

[132] See Commission on Human Rights resolution 1999/64, entitled "United Nations Decade for Human Rights Education".

[133] Elizabeth Odio Benito, *Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief*, Geneva and New York, United Nations, 1989 (Human Rights Study Series, No. 2 (revised version of document E/CN.4/Sub.2/1987/26), United Nations publication, Sales No. 89.XIV.3).

[134] It may be observed, for example, that the Committee on Economic, Social and Cultural Rights, in its General Comment No. 13, systematically refers to numerous international instruments of very unequal legal force (E/C.12/1999/10).

[135] Including the procedure for communications from individuals, groups of individuals or non-governmental organizations known as "procedure 104 EX/3.3".

[136] As at 31 January 1999, 12 States were parties to this Convention, whereas 20 ratifications are necessary for its entry into force. This Convention provides for the right of access to public education (art. 30) and respect for the cultural identity of migrant workers (art. 31).

[137] As the Committee on the Elimination of Racial Discrimination does when considering reports from States: it asks questions about the number of pupils in secondary education, the content of primary school curricula, the rate of illiteracy among the adult population, whether minorities are able to study their own language and the majority language, etc.

[138] In its decision 2 (XIX), the Committee invited UNESCO "to transmit to the Committee periodically information on the experience gained by it in the fields of teaching, education ... with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups, as specified in article 7 of the Convention" (para. 3); see the report of the Committee on its two sessions in 1979 (A/34/18), chap. VIII, sect. A.

[139] In the meantime, the bold monitoring carried out by the Human Rights Committee, including in the area of education, pursuant to article 26 of the International Covenant on Civil and Political Rights, should be reinforced and supported.

[140] As in the case of refugees' right to education, which is indeed protected by the Convention relating to the Status of Refugees but for which there is no effective monitoring mechanism.

[141] For a detailed study of this question, see Amor, A/CONF.189/PC.1/7, op. cit. (last part of note 67).

[142] See A/CONF.189/PC.1/11 (note 97), para. 43.

[143] See A/CONF.189/PC.1/11 (note 97), paras. 44 and 50. In addition to national and international non-governmental organizations, several international and regional organizations are particularly well placed to help collect the data and assist States in this regard (ILO, UNESCO, UNDP, UNICEF, the Council of Europe, etc.).

[144] In this connection, see the conclusions of the seminar on the role of the Internet in the light of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (E/CN.4/1998/77/Add.2, paras. 145-159); see also Commission on Human Rights resolution 1999/64 entitled "United Nations Decade for Human Rights Education".

[145] See "Consultation on the use of the Internet for the purpose of incitement to racial hatred, racial propaganda and xenophobia" (A/CONF.189/PC.1/5), paras. 5-7.

[146] Preface to Katérina Stenou, *Les images de l'autre. La différence: du mythe au préjugé*, Paris, Seuil-UNESCO, 1998.

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WORLD CONFERENCE AGAINST RACISM,
RACIAL DISCRIMINATION, XENOPHOBIA
AND RELATED INTOLERANCE

Preparatory Committee
Second session
Geneva, 21 May-1 June 2001
Item 6 of the provisional agenda

REVIEW OF REPORTS, STUDIES AND OTHER DOCUMENTATION FOR THE PREPARATORY COMMITTEE AND THE WORLD CONFERENCE

Note by the Secretary-General

The Secretary-General has the honour to transmit to the Preparatory Committee the study "Racial discrimination, xenophobia and intolerance against migrants", prepared by Ms. Gabriela Rodriguez Pizarro, Special Rapporteur on the human rights of migrants, pursuant to Commission on Human Rights resolution 1999/44.

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Annex

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Introduction

1. Commission on Human Rights resolution 1999/44 invited the Special Rapporteur on the human rights of migrants to contribute to the identification of major issues to be considered by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. At its fifty-sixth session, the Commission adopted resolution 2000/48 entitled "Human rights of migrants". In that resolution, the Commission encouraged the Special Rapporteur to continue her work of overcoming obstacles to the full and effective protection of the human rights of migrants, as set forth in resolution 1999/44, and referred to key questions relating to her mandate.

2. In its resolution 2000/48, the Commission recalled General Assembly resolution 40/144 of 13 December 1985, by which it approved the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, and indicated its concern at the manifestations of racism, xenophobia and other forms of discrimination and inhuman and degrading treatment against migrants in different parts of the world, strongly condemned all forms of racial discrimination and xenophobia related to access to employment, vocational training, housing, schooling, health services and social services, as well as services intended for use by the public, and welcomed the active role played by governmental and non-governmental organizations in combating racism and xenophobia and assisting individual victims of racist acts, including migrant victims.

3. The Special Rapporteur has therefore considered it of the utmost importance for her to become involved in the preparatory work for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, specifically the work of the Preparatory Committee at its second session. At the first session, the Special Rapporteur drew attention to the high incidence of cases of discrimination and violence against migrant women. In this document, the Special Rapporteur would like to highlight a few critical aspects affecting migrants which in many cases lead to discrimination, racism and intolerance against migrants.

4. The Special Rapporteur would like first of all to note that, because of the absence of migration policies conducive to regular migration, very few cases of discrimination and violence are reported and even fewer are the subject of a formal complaint. The absence of migration policies also paves the way for exploitation and abuse and for traffic in migrants and traffic in persons.

5. In view of the prevailing lack of protection for the rights of this segment of migrant populations, there is a need to discuss the concepts contained in human rights instruments, especially those whose provisions relate to the status of migrants, migrant workers, violence against migrant women and girls and unaccompanied minors, together with their implications for the responsibilities of States. A further question is whether the forums available for intersectoral dialogue, between Governments, societies and the international community, in which the migrants themselves are involved, offer viable opportunities for seeking remedies for the unprotected situation of this large segment of the world's population. According to International Labour Office statistics, there are 150 million migrants in the world today.

6. Drawing on previous discussion, this document gives some suggestions on how to prevent discrimination and violence against migrants, by improving the channels by which such practices can be corrected. One important means of achieving this is to allow migrants the opportunity to communicate what they experience before, during and after their transfer. Another is empowering them to do that by making their views known in the forums where decisions are made specifically with respect to resolution 1999/44, paragraph 6.

7. The last part of the document contains some recommendations for designing a strategy to help redress violations of the human rights of men and women migrants, in particular the many forms of discrimination against them. Particular attention is paid to forums for dialogue as an important means for migrants and their organizations to make themselves heard. They are seen as a strategy for overcoming the vicious circle of victimization, by recognizing the strengths and skills which migrants possess for defending their rights.

8. The Special Rapporteur therefore believes in the importance of participating actively in all the preparatory meetings and discussion groups whose task is to provide the outline for a declaration and plan of action to be discussed in Durban. She has made an effort to participate personally in all the preparatory meetings, and, where this has not been possible, has contributed by sending a message indicating her deep concern at the acts of racism, discrimination and xenophobia which are occurring with increasing frequency against migrant women, children and men.

9. The Special Rapporteur accordingly took part in the Regional Seminar of Experts on preventing ethnic and racial conflict in Africa, held at Addis Ababa from 4-6 October 2000, and the Latin America-Caribbean Regional Seminar of Experts on economic, social and legal measures to combat racism with particular reference to vulnerable groups, held in Santiago, Chile, from 25-27 October 2000. The Special Rapporteur sent a communication with conclusions and recommendations for the Regional Conference of the Americas in preparation for the World Conference, held at Santiago, Chile on 4-5 December 2000, and attended and contributed to the intergovernmental preparatory meetings held at Dakar, Senegal from 22-24 January 2001 and Tehran, Islamic Republic of Iran, from 19-21 February 2001. She has also participated in various satellite meetings for the Conference, such as the meeting organized in Segovia, Spain, from 16-18 February 2001 on human rights and migratory flows.

10. In accordance with the above-mentioned resolution, the Special Rapporteur began her activities by inviting States, intergovernmental organizations, international organizations and non-governmental organizations to provide her with any information which might be of relevance to her mandate. In response to this appeal, the Office of the United Nations High Commissioner for Human Rights has received information from various sources, which is being analysed. The Special Rapporteur, who took up her mandate in 1999, has completed her first mission, a visit to Canada in September 2000, where she was able to collect information of important interest by personally interviewing a large number of migrants of different national origins.

11. Based on her participation in such meetings and the information collected and interviews conducted since her appointment in 1999, the Special Rapporteur wishes in this document to place on record the issues of concern to her regarding the inevitable relationship between

migration, racism, xenophobia and discrimination. She wishes to express her concern at the link between the traffic in migrants, the traffic in persons and racism, racial discrimination, xenophobia and all forms of intolerance specifically affecting migrants in countries throughout the world. The Special Rapporteur also wishes in this document to analyse the progress made regarding the issue of migrant women and the main topic of concern to the World Conference. She submitted for consideration to the first session of the Preparatory Committee, which took place in Geneva in May 2000, a report entitled "Discrimination against migrants - migrant women: in search of remedies" (A/CONF.189/PC.1/19), which analyses the causes and consequences of the discrimination to which migrants are often subjected.

I. DISCRIMINATION AND XENOPHOBIA AGAINST MIGRANTS

12. Based on the definition of discrimination as being "any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life" (International Convention on the Elimination of All Forms of Racial Discrimination, art. 1, para. 1), the Special Rapporteur wishes in this context to draw the attention of the World Conference to the impossibility of addressing the question of migrants' human rights without referring to the vicious circle: migration - racism - xenophobia. The abuses being committed with increasing frequency in transit countries and countries of destination, most of which have well-established democratic traditions, are not perceived by their institutions as warnings that xenophobic outbreaks are on the rise. The Special Rapporteur would like to draw attention to the migrants' situation of social exclusion and extreme poverty and the fact that their desperation is compounded by threats to their relatives and debt bondage in their countries of origin.

13. Xenophobic and racist attacks on migrants are definitely connected with their non-national status and in many cases with the absence of legal channels for migration, which lead to irregular migration and which generally also produce anti-migrant responses in society. The problem of discrimination also arises when conditions of labour migration involve situations of abuse, not only by individuals and groups connected with organized crime, which sell identity papers to potential migrants, but also by employers who, to avoid social security payments or taxes in their countries, hire undocumented workers, termed "illegal" by the migration authorities; the victim is then criminalized or penalized while both the traffickers and employers take advantage of the lack of legal, social and economic protection for undocumented workers and remain unpunished.

14. The criminalization of undocumented migrants, for the offence of being in a country without proper papers, makes them vulnerable to potential racist or xenophobic acts in the societies of the countries involved. Society distorts their situation, regarding them as "delinquents", and is quick to connect them with drug trafficking or robbery. Their undocumented status is not the means but the consequence that makes many migrants vulnerable to the point of crime becoming easy prey for criminal networks. We have recently seen, in a European country, how an ordinary crime was quickly attributed to a migrant minority on the increase in this particular country. This was the result of a grass-roots movement in the region led by certain groups against immigrants in the area, especially immigrants of Albanian origin.

The Special Rapporteur wishes to draw the attention of the World Conference and international society in general to the danger of this type of reaction, not only for migrants, but also for the migrants' societies of destination, in which the patterns of individual and group behaviour being established will have a negative impact on their children's upbringing as xenophobic models are handed down to them by adults and discriminatory sectors of society.

15. For all these reasons, it is of critical importance to make our societies aware of the real causes of migration, which affect all of us in the global village. Structural adjustment, neoliberalism and market conditions favouring only a small number of nationals, together with social and economic inequality cause people to migrate in search of better opportunities. However, it cannot be said that economic factors are the sole cause of migration in search of work; social and educational factors and social injustice also play a role in the decision to leave. Apart from the fact that the countries of the North, the most economically-developed countries, need skilled labour, whether inexpensive or professional, our topic of concern is the effective protection of the human rights of migrant men and women. An ideal voluntary departure process is an organized, formal system of migration in which everyone, the receiving country, the migrants themselves and the country of origin, stands to benefit. The need for equality and justice in working conditions should be borne in mind by all countries requiring migrant labour today.

16. The Special Rapporteur also draws the attention of the World Conference to a factor which was mentioned at all the meetings she attended and in all the countries she visited which receive migrants. The idea is gaining credence that migrants are needed as a labour force to offset the population decline or ageing of the economically-active population in the receiving countries. Although the Special Rapporteur has attempted, since taking up her mandate in 1999, to highlight the positive nature of migration and the valuable contribution it involves for both countries of origin and receiving countries, she wishes to express her concern at the use of migrants merely as necessary labour and a means for developed industrial societies to maintain their standard of living, which would be difficult to attain without such labour given the lack of replacement capacity of such countries and regions.

17. Migrants are people and, as such, have certain inherent rights. These rights entitle them to the same rights as the rest of the population, especially as they are making a positive contribution to countries' economies and cultural wealth. This ideal, however, will never be reached without the support of the migrants' countries of origin, which have a duty to support their nationals even when they are living abroad. Migrants' countries of origin must recognize the importance of the economic contribution they receive from their nationals who have emigrated to other countries in the form of payments to their families back home.

18. We must not forget that, although migratory flows are not a product of the century which has just ended, recent data shows us that migration has increased in recent decades, leading to growing concern among Governments, civil society and international intergovernmental organizations. Some of the causes of movements of persons within and outside of national frontiers are extreme poverty, racial discrimination, internal armed conflicts, lack of opportunity, discrimination against women and family reunification. Consequently, such migratory flows have an important impact not only on internal social and political relations, but also on relations

between receiving countries and countries of origin. There are approximately 150 million people temporarily living outside their country of origin today. They include 97 million migrant workers, according to International Labour Organization (ILO) estimates.

19. The Special Rapporteur therefore wishes to draw the attention of the World Conference to the need for a serious and in-depth approach to this question. Although in the one and a half years since her mandate began she has seen progress in the attitude of States, in recognizing the inevitable link between migration, racial discrimination, xenophobia and intolerance, much remains to be done to combat the spectres of intolerance and discrimination that are negatively affecting the main urban centres as the world enters the twenty-first century. We must also not forget that the violation of migrants' human rights is one of the new, modern forms of human rights violation. If we really wish to make a serious effort to put an end to such violations, the only way to do so is to recognize their existence and our determination to resolve them, and this is the step we must take in Durban.

20. The criminalization of the victims of the traffic in migrants and traffic in persons are specific human rights violations of our time, which bring shame on all of humanity as we enter the twenty-first century. The Special Rapporteur also wishes to make this clear, in order to refute those who hold that racism was overcome in the century that has just ended, and refuse to address the violations occurring today.

21. To that end, the Special Rapporteur wishes to draw the attention of the World Conference to the following issues: migrant women, traffic in persons, unaccompanied minors and undocumented persons.

II. MIGRANT WOMEN

22. For the above reasons serious consideration should be given to the situation of migrant women, in particular women heads of household who leave their environment behind in order in order to help raise and educate their children, whose vulnerability (which should not be seen as weakness), stems from the double discrimination to which they are subjected, both as women and as migrants.

23. In many cases women are forced to leave their own children behind in order to take care of the children of other persons and thus be able to give their own an adequate education and some prospect of a decent life. In particular, the question of domestic workers should be revisited in order to address the abuses and violations of basic human rights which they suffer as a result of discrimination, xenophobia and, in many cases, due to their different ethnic and racial origin. Efforts should also focus on the situation of migrant women who work in border areas and are frequently discriminated against and subjected to a range of abuses, for example wage discrimination, due to their national, and at times racial, origin.

24. Migrant women's feelings of being uprooted go together with feelings of loneliness. The high hopes that organized crime agents can create for desperate mothers and the vulnerability of undocumented migrant women make them easy prey for the agents and expose them to high-risk situations in the context of irregular migration. In many cases, this combination involves

detention, debt bondage, falling into the hands of smugglers and being threatened into performing degrading or slavery-like labour, in violation of the Declaration on the Elimination of Violence against Women.

III. MIGRANT CHILDREN

25. With regard to the question of unaccompanied minors, it must be pointed out that many families in countries of origin are forced to send their children abroad to study or work owing to the lack of opportunities in those countries and the many opportunities offered to heads of household by the agents of transnational organized crime. In the majority of cases, these minors are abandoned by agents in transit countries or the host country after the families have paid large amounts of money. These minors run the risk of being subjected to serious abuses and even sexual, degrading and slave labour. In other cases, they are detained, expelled or deported even though they are victims.

26. During detention, which often takes place in centres for adults, for prolonged periods lasting in some cases for months or even years, the fundamental rights of these minors are frequently violated. The cycle of clandestinity and irregularity in which large numbers of migrants become trapped, in some cases as a result of the lack of information and, in others, because of bureaucratic red tape, is starting to be handed down to the children. In many cases, access to health care is denied to the children of migrants and this is contrary to the Convention on the Rights of the Child. Disregarding biased interpretations of the Convention to avoid obligations, it cannot be forgotten that children in this situation are very likely to fall into the hands of traffickers and to be forced into sexual slavery.

27. As part of this analysis, the Special Rapporteur draws particular attention to the cases of children who are born in the host State and whose parents are in an irregular situation. If the host State forces the parents to leave the country, the child is being denied the right to develop as a national of the State where he was born (when the State in question uses the jus soli criterion for determining nationality), even though the State grants this right to all other children born in its territory. The Special Rapporteur wishes to draw the attention of Governments to the particular situation of migrant women domestic workers. Reports are increasingly being made of sexual abuse by the employers of these persons as a result of the lack of protection in host countries and inequality between employer and worker. There is an alarming number of cases of births in which it is claimed that the father is the employer, although he does not recognize the child. These children, whose numbers are increasing, are unprotected and in many cases discrimination is the result. This result must be analysed in order to find a solution which will provide protection for a group of children born as a result of the abuse of domestic workers by their employers.

28. The Special Rapporteur also wishes to draw attention to discrimination against migrant women and children in detention centres. She considers this measure to be unjust and necessary only in cases of criminal activity by adults, and wishes to draw attention to rapes in custody and other forms of sexual violence against undocumented women belonging to minority groups, as well as the fact that such violations go unreported. This phenomenon is, unfortunately, not unconnected to the link which exists between violence against women and forms of

discrimination, xenophobia and intolerance. For this reason, the Special Rapporteur believes that there is an urgent need for a code of conduct for officials and private guards, to fill the gap found in many countries.

29. The Special Rapporteur has received many reports of discrimination and abuse in this context. Consequently, it is one of the elements which she considers to be extremely important for her country visits. She wishes to appeal to countries and to community associations working for the defence and protection of migrants' human rights to facilitate the reporting of cases of abuse and discrimination and to prevent such reports being used as negative or dissuasive factors in evaluating applications for residency in host countries. In many cases, migrants in detention or holding centres awaiting a decision in their cases cannot report certain abuses for fear of affecting their case negatively. Individuals who are frightened into silence are subject to serious psychological repercussions.

IV. TRAFFIC IN MIGRANTS

30. The Special Rapporteur wishes to draw the attention of the World Conference to the relationship between the traffic in migrants and discrimination, xenophobia and racial discrimination. Bearing in mind that traffic in migrants and traffic in persons affect precisely those groups that are excluded in developed societies and in less economically-developed countries, it is important to note that the traffic in persons represents one of the new forms of human rights violation. This fact points up the link between the traffic in persons and discrimination, racism and xenophobia, in that these population groups, the victims of organized crime, are stigmatized as offenders and no consideration is given to their victim status.

31. During 1999 and 2000 various tragic events occurred which resulted in losses of human live and in which "mafias" of traffickers in persons were ultimately or initially involved. Boatfuls of persons hoping for a better future, most of whom had been deceived as to their prospects on arrival, were taken directly to detention centres or ordinary prisons to await a decision on their case. Discrimination in such cases is becoming increasingly obvious as the victims are criminalized and the alleged perpetrators of this new form of human rights violation go unpunished. In other cases, certain societies have reacted in a racist and xenophobic manner to such persons, who are first and foremost victims. The Special Rapporteur wishes to draw the attention of the World Conference to the danger of certain attitudes displayed by political leaders who stigmatize migrants, thereby causing impulsive and prejudiced reactions that may lead to serious human rights violations.

32. For this reason, the Special Rapporteur also wishes to take the opportunity provided by the World Conference to appeal to States to establish penalties for the perpetrators of transnational crime, specifically the traffic in persons, in their respective countries. States cannot remain idle in the face of a practice which is costing the lives of thousands of people.

V. CONCLUSIONS AND RECOMMENDATIONS

33. In the few months remaining before the Durban conference takes place, the Special Rapporteur wishes to note that the time has come to go beyond mere reporting and to make concrete proposals based on the joint reponsibility of States of origin, transit and destination, so

that migration will be seen as a contribution to societies and not as a phenomenon providing new opportunities for human rights violations, while the actual perpetrators remain unpunished. The preparatory meetings and regional meetings of experts have produced a great number of proposals, which must now be put into practice.

34. In order to combat the racial discrimination, xenophobia and intolerance which affect a great number of the estimated 150 million migrants in the world every day, information campaigns should be conducted to highlight the positive factors of migration when it takes place under regular conditions precluding abuses on the part of employers and unscrupulous traffickers in persons who are clearly enjoying the positive aspects of migration. The negative, criminal picture of migration must be ended and migrants' contributions to both countries of origin and host countries recognized. Positive aspects such as growth in production (agriculture), and therefore profits, in many sectors, and the receiving countries' need for the labour which they themselves lack, must be highlighted in the countries where they occur.

35. All of us, civil society, non-governmental organizations and academic institutions, must support States in creating educational forums beginning at the school level, aimed at avoiding racial discrimination, xenophobia and intolerance towards migrants. States must recognize the inevitable migration-xenophobia-discrimination link if they are to combat this type of violation of fundamental human rights.

36. Migrant populations generally suffer from structural discrimination involving various forms of exclusion and reduced opportunities for employment. The Special Rapporteur appeals to those countries which have not yet ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to take steps to do so. This important instrument provides specific elements regarding protection of nationals abroad, vulnerability to abuse, slavery-like practices and the traffic in persons. At the time of preparation of this report, 16 States have ratified the Convention. Only four more ratifications are needed for this important instrument for the protection and defence of migrants to enter into force. However, we must not leave it at that if we wish to continue combating the lack of protection which opens the way to discrimination. The campaign for the ratification of the Convention must continue beyond the Convention's entry into force.

37. The Special Rapporteur encourages the States meeting in Durban to establish programmes facilitating migrants' access, without discrimination, to basic social services, including primary education and health care.

38. We must combat the use of the law to discriminate against any one whomsoever. In particular, in the area of interest to her, the Special Rapporteur appeals to States to dismantle the barriers that prevent migrants and people in general from enjoying equality before the law by ensuring that protection and defence mechanisms function in an egalitarian manner and without discrimination based on race, origin, sex or religion. The Special Rapporteur believes there is an urgent need for action to ensure that violations of the human rights of migrants, whether in regular or irregular situations, are reported in order that they might be effectively combated.

39. The Special Rapporteur encourages institutions such as the ombudsman in all countries where they exist to ensure that violations of migrants' human rights are reported and legal

proceedings instituted against those responsible reach the highest levels of national systems of justice, in the interest of effectively combating the discrimination suffered by migrant men and women in many countries.

40. The Special Rapporteur wishes to draw States' attention to the need for policies which guarantee the integration of migrant women in all sectors and which put an end to possibilities of discrimination and abuse. Steps must be taken to guarantee the enjoyment of all rights by all sectors, in particular migrant women, who are doubly vulnerable in many societies based on their status as both women and migrants.

41. Concerning discrimination, racial discrimination, xenophobia and intolerance by certain police officers and border guards, the Special Rapporteur appeals to the States to train their police officers and border guards at ports and airports through awareness-raising campaigns designed to end the rigid prejudices that lead to flagrant human rights violations in countries throughout the world every day. More and more migrants, including tourists who have no intention of remaining in the receiving or transit country, are suffering racial discrimination and xenophobia because of their national or ethnic origin. The presumption of innocence must apply to all, including alleged offenders who are nationals.

42. Regarding the traffic in migrants, studies should be conducted to shed light on how racism, racial discrimination, xenophobia and forms of intolerance affect these people. The Special Rapporteur wishes specifically to draw attention to prejudice against migrant women who have fallen into the hands of traffickers, who are regarded and treated as criminals with no attempt made in the host or transit country to identify the causes of their situation.

43. The Special Rapporteur appeals to the media in countries throughout the world to remember that migrants are human beings before condemning any behaviour. While understanding the need for promptness in producing the news, the Special Rapporteur encourages the media, especially now when migration is being viewed irrationally in many States, to delve into the causes of migration and study the question seriously, thus helping to protect the human rights of migrants.

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REVIEW OF REPORTS, STUDIES AND OTHER DOCUMENTATION FOR THE PREPARATORY COMMITTEE AND THE WORLD CONFERENCE

Contribution of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

1. In Commission on Human Rights resolution 2000/38 (para. 13 (g)), the Special Rapporteur on freedom of opinion and expression was invited to "contribute effectively to the preparatory process for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance by transmitting to the High Commissioner his recommendations on freedom of opinion and expression which have a bearing on the World Conference".

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* This document is being issued in the original language only.

2. In this context, the Special Rapporteur would first recall international legal standards which he feels are relevant to both the right to freedom of opinion and expression and the fight against racism and related intolerance, in particular:

(a) The right to freedom of opinion and expression as guaranteed by article 19 of the Universal Declaration of Human Rights (UDHR) and article 19 of the International Covenant on Civil and Political Rights (ICCPR) which includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers;

(b) The principle of non-discrimination, stipulating that everyone is entitled to all rights and freedoms set forth in international instruments without distinction of any kind, such as race, colour, language, religion and national origin, as recognized by article 2 of UDHR, article 2, paragraph 1 of ICCPR; article 2, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

3. The Special Rapporteur also acknowledges that:

(a) The right to freedom of expression, which includes freedom to seek, receive and impart information and ideas, may be subject to certain restrictions such as "respect of the rights or reputations of others" (ICCPR, art. 19, para. 3 (a));

(b) That "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law" (ICCPR, art. 20, para. 2);

(c) In the exercise of one's rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others (UDHR, art. 29, para. 2);

(d) The rights and freedoms set forth by the UDHR may in no case be exercised contrary to the purposes and principles of the United Nations (UDHR, para. 3);

(e) "Any right to engage in any activity ... aimed at the destruction of any of the rights and freedoms" set forth in the ICCPR should be prohibited (ICCPR, art. 5);

(f) Article 4 of ICERD condemns attempts to justify or promote racial hatred and discrimination in any form, requires the adoption of immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination, and stipulates that States parties "shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities ...." (ICERD, para. 4 (a)).

4. In light of these principles, the Special Rapporteur would like to address a few key points which he considers of importance in the context of both his mandate and the objectives of the World Conference.

I. THE POSITIVE CONTRIBUTION OF THE EXERCISE OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION TO THE FIGHT AGAINST RACISM, DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

5. The exercise of the right to freedom of opinion and expression, particularly by the media, and the full respect for the right to freedom of information contribute extensively to the fight against racism, discrimination, xenophobia and related intolerance, the free flow of information and ideas being one of the most powerful ways of combating these phenomena.

6. The Special Rapporteur recognizes:

(a) That the free flow of information and ideas is essential to inform the public, generate debate on important and controversial issues such as racism and related intolerance, and increase awareness about racism and its consequences;

(b) That the free flow of information and ideas also allows for the voices of the most disadvantaged in society and those whose rights have been violated to be heard. Persecuted minorities, vulnerable children, oppressed women, and silenced racial or ethnic groups can be empowered through the dissemination of information concerning them and their experience;

(c) That the media can provide unique opportunities to challenge perceptions and prejudices, to educate about different cultures and to correct distorted images about groups and history. In this sense, the media have an important role to play in building confidence between different racial and ethnic groups by reporting on issues concerning tolerance among various national, ethnic, religious and linguistic groups, as well as on various cultural experiences and identities;

(d) That the unhindered exercise of the right to freedom of expression, in particular by the media, constitutes an important tool for the promotion and protection of human rights more generally by facilitating the building of a culture of human rights and by allowing for human rights violations to be exposed, wherever and whenever they occur.

7. Consequently, the Special Rapporteur would make the following recommendations:

(a) Governments should guarantee free access to information which exposes or otherwise helps to combat these problems, whether that information is held by public or private bodies (unless denial of access can be justified as being necessary to protect an overriding public interest);

(b) Governments should ensure that the public has adequate access to reliable information relating to racism, discrimination, xenophobia and intolerance including, where necessary, through the collection and dissemination of such information by public authorities.

II. "HATE SPEECH" - AN AREA OF CONFLICT BETWEEN THE RIGHT TO FREEDOM OF EXPRESSION AND THE PRINCIPLE OF NON-DISCRIMINATION

8. The Special Rapporteur is of the view that the right to freedom of expression should remain unabridged. However, he acknowledges that in some circumstances, and in particular when freedom of speech leads to the incitement of hatred and/or discrimination, this right conflicts with the rights of others.

9. In this connection, the Special Rapporteur recognizes that "hate speech", or the advocacy of national, racial, religious or other hatred, constitutes an area which commands due and proper attention. The Special Rapporteur is aware of, and concerned by, the potential harm, whether psychological or physical, which can result from hate speech, in particular incitement to violence, heightened tensions between groups of different cultural, ethnic, racial and religious identities, and the perpetuation of stereotypes.

10. In light of these concerns, the Special Rapporteur recognizes that hate speech calls for reasonable restrictions which are necessary to prevent incitement to acts of imminent violence, hatred or discrimination on grounds, among others, of race, religion, colour, descent, or ethnic or national origin. As such, and in accordance with the above-mentioned international standards, the Special Rapporteur wishes to condemn any advocacy of national, racial or religious hatred that constitutes an incitement to discrimination, hostility or violence; such advocacy should be prohibited by law.

11. At the same time, the Special Rapporteur expresses concern about the possibility of such prohibitions being abused, particularly where respect for human rights and the rule of law is weak and hate speech laws have been used in the past against those they were intended to protect.

12. The Special Rapporteur wishes to emphasize that great care must be taken to achieve an appropriate balance between the rights to freedom of opinion and expression and to receive and impart information and the prohibition on speech and/or activities promoting racist views and inciting violence. In this regard, the Special Rapporteur would recommend that:

(a) Hate speech laws should, at a minimum, conform to the following:

(i) No one should be penalized for statements which are true;

(ii) No one should be penalized for the dissemination of hate speech unless it has been shown that the perpetrator had the intention to incite discrimination, hostility or violence;

(iii) The right of journalists to decide how best to communicate information and ideas to the public should be respected, particularly when they are reporting on racism and intolerance;

(iv) No one should be subject to prior censorship;

(v) Any imposition of sanctions by courts should be in strict conformity with the principle of proportionality;

(b) Any civil, criminal or administrative law/measure that constitutes an interference with the freedom of expression must be clearly and narrowly defined, use terms which have been authoritatively interpreted by independent bodies, be applied by a body which is independent and in a manner which is neither arbitrary nor discriminatory, and be subject to adequate safeguards against abuse;

(c) The Special Rapporteur encourages Governments to adopt a balanced approach by imparting information that is both accurate and relevant to the public, and to strive to promote tolerance.

III. THE INTERNET

13. The Special Rapporteur considers the Internet to be an increasingly important human rights education tool which contributes to a broader awareness of international human rights standards, provisions and principles. He is of the view that "the new technologies and, in particular, the Internet are inherently democratic, provide the public and individuals with access to information sources and enable all to participate actively in the communication process" (E/CN.4/1998/40, para. 45).

14. The Special Rapporteur would like to stress the significant contribution that the use of new technologies such as the Internet can make in the fight against racism. The global reach and relative ease of use of the Internet make it a unique and highly effective tool for the promotion of human rights, enabling an unprecedented audience previously unfamiliar with human rights education to gain access to valuable information. It can be used to disseminate positive information and materials, research and facts about immigration and minorities which can in turn support action against racism and discrimination, raise awareness, promote understanding and increase tolerance.

15. At the same time, the Special Rapporteur recognizes the legitimacy of concerns about dissemination on the Internet of racist and xenophobic material, such as hate speech, which constitutes a contemporary form of racism. He is aware that the features that make the Internet an asset to democracy and the realization of human rights also render it a powerful tool for the spread of hateful messages and propaganda, and that the Internet makes hate speech available to those who would never before have come into contact with it. In other words, he acknowledges that although "racist material represents only a small percentage of the volume of information on the Internet and that racists in cyberspace are comparatively few and far between, the Internet does act as a 'force-multiplier, enhancing power and enabling racists' to have influence in excess of their true numbers. The Internet allows racists to cross national boundaries and bypass laws banning hate material by moving sites abroad" (A/CONF.189/PC.1/5).

16. In light of these considerations, the Special Rapporteur condemns the abuse of the Internet by some groups and/or persons to promote racist and hate speech in violation of international law, or the use of the Internet as a platform for any kind of speech which exceeds the threshold of tolerance.

17. However, the Special Rapporteur believes that the dangers posed by such materials on the Internet can be adequately addressed through the judicious application of existing international standards and national laws consistent with international standards governing freedom of opinion and expression and the right to seek, receive and impart information. He considers that on-line expression should be guided by international standards and be guaranteed the same protection as is awarded to other forms of expression.

18. In this regard, his recommendations are as follows:

(a) Governments should be encouraged to view the Internet and other information technologies as means to encourage a plurality of voices and to take steps aimed at integrating those views in the development process;

(b) All reasonable steps should be taken to promote access to the Internet. The general rule should be the protection of the freedom of expression and opinion and the right to information and the restriction of these rights should be the exception;

(c) Governments should prevent, to the fullest extent possible, the excessive imposition of regulations on the use of the Internet, especially if they are based on broadly worded and vague justifications. Extremely harsh punitive measures by Governments against groups and individuals seeking to benefit from new information technologies should be eliminated;

(d) Governments should be encouraged to use the Internet as a tool for education against racism and for tolerance.

19. Finally, the Special Rapporteur would like to draw attention to the statement on racism and the media adopted jointly with the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe and the Special Rapporteur on Freedom of Expression of the Organization of American States (see annex). This statement contains important recommendations which complement those above. The Special Rapporteur hopes that his recommendations will be taken into account by the World Conference.

ANNEX

International mechanisms for promoting freedom of expression: Joint statement on racism and the media by the United Nations Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression

In support of the objectives and with the desire to make a contribution to the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the United Nations Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression

Reaffirm that the promotion of equality and freedom from racism, discrimination, xenophobia and intolerance are essential to the realization of human rights and freedoms;

Stress the fundamental importance of the right to freedom of expression, including of the media, for the personal development, dignity and fulfilment of every individual, for the promotion and protection of equality and democracy, for the enjoyment of other human rights and freedoms, and for the progress and welfare of society;

Note with concern the prevalence of racism and discrimination, as well as the existence in many countries and regions of the world of a climate of intolerance, and the threat these pose to equality and full enjoyment of human rights and freedoms;

Recognize the positive contribution the exercise of the right to freedom of expression, particularly by the media, and full respect for the right to freedom of information can make to the fight against racism, discrimination, xenophobia and intolerance;

Recognize as harmful all forms of expression which incite or otherwise promote racial hatred, discrimination, xenophobia and intolerance and note that crimes against humanity are often accompanied or preceded by these forms of expression;

Are cognizant of the need to ensure a balance between efforts to combat racism, discrimination, xenophobia and intolerance and protection of the right to freedom of expression;

Reiterate the need to respect the editorial independence and autonomy of the media;

Desire to make a contribution to the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance;

Adopt the following joint statement:

Promoting an optimal role for the media in the fight against racism, discrimination, xenophobia and intolerance requires a comprehensive approach which includes an appropriate civil, criminal and administrative law framework, and which promotes tolerance, including through education, self-regulation and other positive measures.

These efforts must be taken with the realization that respect for freedom of expression and information ensures that all citizens have access to information which helps them form their opinions and challenges their views, and which they need to make decisions.

Civil, criminal and administrative law/measure

Any civil, criminal or administrative measures that constitute an interference with freedom of expression must be provided by law, serve a legitimate aim as set out in international law and be necessary to achieve that aim. This implies that any such measures are clearly and narrowly defined, are applied by a body which is independent of political, commercial or other unwarranted influences and in a manner which is neither arbitrary nor discriminatory, and are subject to adequate safeguards against abuse, including the right of access to an independent court or tribunal. If these safeguards are not in effect, there is a very real possibility of such measures being abused, particularly where respect for human rights and democracy is weak and hate speech laws have been used in the past against those they should be protecting.

In accordance with international and regional law, hate speech laws should, at a minimum, conform to the following:

No one should be penalized for statements which are true;

No one should be penalized for the dissemination of hate speech unless it has been shown that he/she did so with the intention of inciting discrimination, hostility or violence;

The right of journalists to decide how best to communicate information and ideas to the public should be respected, particularly when they are reporting on racism and intolerance;

No one should be subject to prior censorship; and

Any imposition of sanctions by courts should be in strict conformity with the principle of proportionality.

These standards should also apply to new communications technologies such as the Internet, which are of enormous value in promoting the right to freedom of expression and the free flow of information and ideas, particularly across frontiers and at the global level. Any restrictions on these new communications technologies should not:

Limit or restrict the free flow of information and ideas protected by the right to freedom of expression; or

Enable the authorities to interfere with the work of, or to intimidate, human rights defenders.

Defamation laws have in some cases been used to limit the right to freely identify and openly combat racism, discrimination, xenophobia and intolerance. To prevent this from happening, defamation laws should be brought into line with international standards on freedom of expression, in particular as outlined in our Joint Declaration of 30 November 2000.

Freedom of information

The free flow of information and ideas is one of the most powerful ways of combating racism, discrimination, xenophobia and intolerance. There should be free access to information which exposes or otherwise helps to combat these problems, whether that information is held by public or private bodies, unless denial of access can be justified as being necessary to protect an overriding public interest. In addition, States should ensure that the public has adequate access to reliable information relating to racism, discrimination, xenophobia and intolerance including, where necessary, through the collection and dissemination of such information by public authorities.

Promoting tolerance

Media organizations, media enterprises and media workers - particularly public service broadcasters - have a moral and social obligation to make a positive contribution to the fight against racism, discrimination, xenophobia and intolerance. There are many ways in which these bodies and individuals can make such a contribution, including by:

Designing and delivering media training programmes which promote a better understanding of issues relating to racism and discrimination and which foster a sense of the moral and social obligations of the media to promote tolerance and knowledge of the practical means by which this may be done;

Ensuring that effective ethical and self-regulatory codes of conduct prohibit the use of racist terms and prejudicial or derogatory stereotypes and unnecessary references to race, religion and related attributes;

Taking measures to ensure that their workforce is diverse and reasonably representative of society as a whole;

Taking care to report factually and in a sensitive manner on acts of racism or discrimination, while at the same time ensuring that they are brought to the attention of the public;

Ensuring that reporting in relation to specific communities promotes a better understanding of difference and at the same time reflects the perspectives of those communities and gives members of those communities a chance to be heard; and

Promoting a culture of tolerance and a better understanding of the evils of racism and discrimination.